Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
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Note on this translation. This English text was produced by a machine-assisted translation pipeline from an OCR transcription of the source Latin edition. The draft translation was made by a specialised translation model, assisted by a dedicated ecclesiastical-Latin knowledge base which supplied Douay–Rheims wording for Scripture quotations and verified place-names and terminology. It is an unofficial reading aid and has *not* undergone formal scholarly revision; occasional errors will remain, particularly in the dense citation apparatus. Marginal references of the form [*Latin ed. p. N*] indicate the corresponding page of the source edition, for alignment with the original scans. Blank leaves and unreadable pages have been omitted.

[*Latin ed. p. 1*]

A COMPENDIUM CONCISELY COMPILED AND ILLUMINATED BY THE STUDY AND CARE OF VICTOR PIAZZESI, DOCTOR OF LAWS, namely: Legal and more solemn acts emanating directly from the Supreme Pontiff in Romano: among those which can be made public under the law, whether they are Decrees, or Instructions, or Responses, or other similar matters: especially, in a concise form, expositions and resolutions from various Cardinals in the Sacred Congregations, contributing to the accurate understanding and observance of ecclesiastical law: and finally, other legal matters, by which those things which may present difficulty in the aforementioned acts, or which further contribute to the knowledge of the existing law, are suitably explained: for the benefit of those who diligently strive to understand the laws of the Church, and in the governance of the Christian flock, or in the diligent cultivation of the Lord's vineyard. EDITION STEREOTYPE, ROMA, FROM THE PRINTING PRESS OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, 1898. Reprinted with the permission of Libreria Editrice Vaticana. JOHNSON REPRINT CORPORATION, 111 Fifth Avenue, New York, N. Y. 10003. JOHNSON REPRINT COMPANY LTD., Berkeley Square House, London, W. 1.

[*Latin ed. p. 3*]

FROM THE ACTS OF THE CONSISTORY CONCERNING THE CONSISTORY HELD ON JULY 3, 1882. His Holiness publicly held a Consistory this morning in the Vatican buildings to confer the dignity of Cardinal; to the Most Reverend and Most Reverend Cardinal Carlo Martiali Allemand Lavigerie, who was created and publicly announced in the secret Consistory of March 27 of this year. Then, the same Holiness, in the secret Consistory, proposed the following sees: The titular archiepiscopal Church of the Patriarchate of Antioch, vacant due to the death of the Most Reverend Joseph Ignatius Checa, Metropolitan of Ciliciae, and of the Most Reverend Peter and Barba, the last of that Archbishop, and Castellaci, the last of that Patriarch, who died near the Roman curia; the titular Church of the Southern Province, vacant due to the death of the Reverend Father Placido, outside the Roman curia; the titular Church of the Reverend Father Joseph Ignatius Ordóñez, already Bishop of Bolivarensis; the presbyteral Church of Ralli, of Rome; the presbyteral Church of Riobambensis, for the presentation of other benefices, by virtue of an Apostolic Indult, for the advancement of illustrious men of the Republic, to the service of God; the titular Church of the Congregation for Studies, and of the Sacred Council, for the recognition of legitimate rites, from secret sources; the titular archiepiscopal Church of Nicomedia, vacant due to the death of the Patriarch, and of the Seminary of Rome, and for promotion to the See of the Patriarchate of Ciliciae of the Armenians, the Reverend Father Stephen Azarian,

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favored by the Reverend Father Bianchi, formerly Bishop of Thanensis; the Metropolitan Church of Leopolien, of the Armenian Catholic Rite, vacant; the Metropolitan Church of Quito, in the American vicariate, vacant due to the death of the Most Reverend Gregory Joseph Romaszkan, the last of that Archbishop, who died near the Roman curia.

[*Latin ed. p. 4*]

4 FROM THE CONSISTORIAL ACTS of the deceased, with the favor of the Reverend Isaac Kowicz, a presbyter of the archdiocese of Isaac, through the death of the Most Reverend Philip of Lviv, an Armenian, to the vacant Metropolitan See of Caesarea, with the favor of Francis Joseph I, Emperor of Austria, King of Bohemia and Apostolic King of Hungary. The Reverend Isaac Isakowicz, born of legitimate and honorable Armenian parents in the town of Lysiec in the archdiocese of Lviv, was, until now, a presbyter. The Metropolitan See of Transylvania is vacant, through the death of the Most Reverend Michael Fogarassy, the last bishop, outside the Roman Curia. And the parish of Francis Joseph I, Emperor of Austria, in Suczava, and until now the Dean and Curate of Stanislaopoli, having renounced the dignity of Canon of the Great Chapter of Lviv, was elected to the Metropolitan See of Transylvania. The Reverend Aloysius Carvelli, Bishop of Gragar, having surpassed his fiftieth year, having devoted many years to the care of souls in Mauritania, was, until now, a bishop. The Metropolitan See of Bologna is vacant, with the favor of the Reverend Alexander, a presbyter of Caesena, who was appointed to the See in his fiftieth year. The Metropolitan See of Tergemina is vacant, through the translation of the Reverend Camillus Buggeri, Prince of Transylvania. The parish of Bohemia is vacant, through the resignation of the Reverend Francis Baltaglini, to the Metropolitan See of Bologna. The same, first chosen as Professor of Rational and Physical Philosophy and as a judge of clerics in the paternal seminary of St. Justin, having subsequently obtained a parish, was canonically united to the parish of St. John the Apostle, and having renounced the office of curate to the last Antistite, outside the Roman Curia, with the favor of the Reverend John Glavina, until now of Polensis, to the dignity of Apostolic Protonotary, by virtue of the Apostolic Indult, to the favor of Francis Joseph I, Emperor of Austria, King of Bohemia and Apostolic King of Hungary, a Canon of honor. He was also appointed to the parish of Parentini. And in Caesena, and in Cervia, he was also appointed Examiner.

[*Latin ed. p. 5*]

FROM THE ACTS OF THE CATHEDRAL CHURCH OF BRU- ctus. The Inspector of Schools, DECANUS.NORIEN. Having been born through translation, the Reverend Father Camillus Ruggeri was appointed to the position of Prefect of the Seminary, by order of the scholastic council of the Fanense district, with the favor of the Reverend Father Ludovic Gallien,

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and the council of the Presbyters, and having served in that position for five years, he became the General Vicar for Spiritual Affairs, vacant, the Capitular Vicar, among the administrators of the Subiaco Abbey, and was then delegated for the benefit of the churches of Tusculi, or the modern Frascati, and for public beneficence. The CATHEDRAL CHURCH OF BRUNEN, vacant, due to the death of the Most Reverend Charles Notli, the last Bishop of that See, and the Reverend Father Francis Bauer, a Presbyter of the archdiocese of Olomouc, was appointed, with the favor of His Holiness Francis Joseph I, Emperor of Austria, to the General Vicariate for Spiritual Affairs. He was co-opted among the Domestic Prelates of His Holiness, and was honored with the dignity of Archdeacon. The Reverend Father Francis Bauer, born of legitimate, Catholic, and honest parents in Bohemia, near Meziricium Volachov in Moravia, in the archdiocese of Olomouc, having surpassed his fortieth year of age, was appointed.

The CATHEDRAL CHURCH OF GUSIN, vacant, due to the death of the Emperor, John Zaffron, the last Bishop of that See, deceased outside the Roman Curia, with the favor of the Reverend Father Matthew Vodopic, a Presbyter of Ragusini: appointed by virtue of a previously established decree and an Apostolic Indult, to the sacred university of Caesarea, under the Most Serene Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, as Rector. The Reverend Father Matthew Vodopic, born of legitimate, Catholic, and honest parents in Ragusae, in the sixty-sixth year of his age, was appointed. For several years he administered the parishes of his diocese, with the favor of the Reverend Father Emmanuel Schoebel, a Presbyter of the diocese of Regino-Gradicensis, as Secretary and as a counselor in matrimonial causes, of the sacred and prosynodal court of Saint Joseph I, Emperor of Austria.

The CATHEDRAL CHURCH OF LITO- MOIUCEN, vacant, due to the death of the Most Reverend Anthony Ludovic Frand, the last Bishop of that See, deceased outside the Roman Curia, with the favor of the Reverend Father.

[*Latin ed. p. 6*]

From the Consistorial Acts, the Coadjutor with future succession to the Apostolic See of Bohemia and Hungary was appointed. The Reverend Emmanuel Schoebel, formerly of the Carmelite Order, born to legitimate, Catholic, and honorable parents in the village of Radover, in the diocese of Regio-Gradisca, having surpassed his eightieth year, and needing assistance due to his advanced age and infirmity, was appointed Antistite of Mazara del Vallo. He, having previously received the doctorate in sacred theology, and having given his consent, is in need of assistance for pontifical and other pastoral duties in that city and diocese. He is a professor of the religion in the mercantile academy in Prague, and supplements the university's studies of the Old Testament. For reasons of

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health, the Episcopal See of Areopoli, under the Metropolitan Archbishop, and the Cathedral Church of Saint Gallen are vacant, due to death. The Reverend Cyriacus Sancha Hervás was appointed, in favor of the Reverend Franciscus Giordani, a priest of the diocese of Albano, who was appointed to the pontifical and pastoral duties of that diocese. He was appointed by the aforementioned Bishop, and is permanently canonically united to the extra-Roman churches and their dioceses of Ostia and Velletri. The Reverend Augustinus Egger, born to legitimate, canonical, and honorable parents in the town of Lanuvii, in the diocese of Albano, having surpassed his ninetieth year, and having previously served for forty years, was appointed Canon of the Cathedral Church of Albano, and successively, Dean, and having renounced the office of Vicar Capitular when that office became vacant. He was also appointed Titular Bishop of Hippen, under the Patriarchate of Jerusalem, vacant due to death, in favor of the Reverend Dominic De Angelis, the last professor of dogmatic theology, sacred scripture, and ecclesiastical history in the diocesan seminary of the Congregation of the Most Holy Redeemer, a priest of the diocese of Cefalù, who also served in the office of pro-synodal examiner.

[*Latin ed. p. 7*]

FROM THE ACTS OF THE EUROPEAN ECCLESIASTICAL EPISCOPAL TITLES, under the Archbishop of Hierapolis, which are vacant due to the death of Nepomucene Bo. me. Ioannis Arnberg, the last of those bishops outside the Roman curia, by the favor of R. D. Pauli Pinna, a presbyter of the diocese of Algars. He holds the SISTERIAL TITLE of 7 PALEM dioceses, under the Archbishop of Caesarea, which is vacant due to the death of me. Georgei Feschker, the last of those bishops outside the Roman curia, by the favor of R. D. Antonini Gaff, a presbyter of Catania. He was also appointed in the fortieth year of his age as an auxiliary in the R. P. D. Ioannis Mariae Filia, the Anti-stite of the Collegiate Church of St. Maria de Eleemosyna in Algars, a canon for pontifical matters, and was elected by the diocese as the rector of the diocesan seminary, and he diligently performed pastoral duties in Catania for the benefit of the diocese. R. D. Paulus Pinna, appointed in the sixty-ninth year of his age, was invested with the doctorate in sacred theology, and received the laurea in the metropolitan chapter, and is currently assigned to the diocesan seminary. He was honored with the dignity of Archidiaconate outside the city of Rome. The TITULAR PALEM is held by the Most Reverend and Reverend Lord, under the title of St. Xystus, a Cardinal Priest of the Roman Curia, and the METROPOLITAN CHURCH of Sebastopol. The NONIEN CHURCH is vacant due to the voluntary resignation, which was carried out and admitted by His Holiness, and is under the Archbishop of Sebastes, vacant due to the suspension of the death of me. Mariae Chauveau, the last of those bishops outside the Roman curia, by the favor of R. P. D. Francisci

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Battaglini, formerly D. Francisci Mariae scopi of Ariminum. The EPISCOPAL CHURCH of the diocese of St. Faith in Bogota is vacant. R. P. D. Severi Garcia, formerly the Auxiliary to the Archbishop of Perge in Pamphylia, was translated to the Tunquensis in the jurisdiction of the United States of America, by the favor of R. D. Columbiae in Meridionali, for pontifical matters and other pastoral duties, by his consent and will, to be carried out in the city and diocese of Tunja. He was also appointed as an Auxiliary to the Most Reverend and Reverend Lord Ioannis Ignatii, a Cardinal Priest.

[*Latin ed. p. 8*]

8. From the acts of the Most Reverend Cardinal Moreno, Archbishop of Toledo, concerning the ecclesiastical and pastoral duties undertaken with his consent and willingness in that city and archdiocese. The Reverend John Francis Bux and Loras, having reached his fifty-ninth year, having previously received the doctorate in sacred theology, and shortly before, the license in sacred canons, obtained the benefice of Penitentiary in the archdiocese of Caesaraugusta, in the district of Cantavieja. He has now resigned from the position of Canon Doctor of the Toledo Chapter, and previously, as Rector of its central seminary. Furthermore, the following churches have been assigned by papal decree: The Archiepiscopal Church of Sein in Syria, vacant due to the death of the Most Reverend Caesar Roncetti, the last Archbishop, who died near the Roman court, has been assigned to the Reverend Father Camillo Santori, who was already the Bishop of Fano. The Archiepiscopal Church of Corinth, in Achaia, vacant due to the death of the Most Reverend Joseph Angelini, the last Archbishop, who died near the Roman court, has been assigned to the Reverend Caesar Sambucelti, a priest of Rome. This man, having surpassed his forty-fourth year, having received the doctorate, was chosen as a professor of philosophy at the College of the Congregation for the Propagation of the Faith, and, among the officials of that Congregation, he served as an auditor of the Apostolic Nunciature in Spain. Devoted to the affairs of the Sacred Congregation dealing with extraordinary ecclesiastical matters, he was previously a Canon of the illustrious collegiate Basilica of Saint Mary of the Martyrs in the City. He was also granted a place among the supernumerary members of the Inner Guard, and most recently, he was sent as an Apostolic Delegate to the Republics of Ecuador, Peru, and Bolivia, outside of the ordinary order. The Metropolitan Church of Freiburg: The Reverend John Baptist Orbin, Dean and Capitular Vicar of that Chapter and Archdiocese, and Doctor of Theology. The Episcopal Church, titular of Aureliopolis: The Reverend Joseph Colgan, Apostolic Vicar of Madraspalan. The Cathedral Church of Solopien: The Reverend Edmond Knight, transferred from the see of Corycens. The Cathedral Church of Southwark: The Reverend Robert Cofflin, Provincial of the Congregation of the Most Holy Redeemer in England. The Church of Portsmouth, erected into a cathedral by His Eminence: The

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Reverend James Virtue.

[*Latin ed. p. 9*]

FROM SESSION 5 OF THE CONGREGATION CONCERNING THE NULLITY OF NOMINATIONS AND THE RESTORATION OF FRUITS, held on August 6, 1881, and March 18, 1882.

(1) SUMMARY OF THE CASE. The Cathedral Chapter of Tournay was established on April 10, 1802, by decree of Cardinal Caprara, acting as delegate of Pope Pius VII. The number of canonries within it was fixed at 2000, as established by an agreement made in the year 1827 between Pope Leo XII and the King of Belgium. A few years ago, the government decreed that pensions should be paid to those who had either diligently performed the office of parish priest, or who had resided among the canons for forty years, or to canons who had reached the age of sixty-five; however, with the condition that, as soon as they received the pension, they would lose their canonry, and another would take their place. Thus, it frequently happened that no one in the Chapter would be found who had diligently performed the office of parish priest for a long period of time, or that canons would leave the Chapter while still capable.

(1) We deviate from our usual practice in this chronicle by omitting the names of the diocese and persons involved in this case. Indeed, most of the circumstances of the case would be inexplicable, unless one considers the adverse mental state of the person who was largely involved, namely, the unfortunate Bishop Dumont, whose solemn deposition we presented in Volume XIII, page 289. The questions concerning the commutation and the Apostolic reservations were so extensively discussed in this case, especially in places subject to the Concordat of 1801, that even within the stricter limits, the present summary has exceeded the usual bounds.

[*Latin ed. p. 10*]

10. OF THE NULLITY OF THE NAME (NATION): They were present in the choir. To provide for them, that is, to ensure a place in the Chapter for the parish priests receiving pensions, and that the Canons who would receive a pension would be included among the Chapter members, the late Archbishop of Tournay established four benefices, which took their names from him, and he stipulated in annual accounts the sum of 500 francs for each benefice. Of these benefices named after Labis, one was conferred in the year 1876 on September 23rd by the Most Reverend Joseph Dumont, who governed the Diocese at that time, in recognition of the excellent services rendered by John Baptist for the Diocese and for the Church in general. The new benefice had among its titular Canons Joseph, who, having completed 65 years of age, was eligible to receive a pension. They devised a plan to exchange their respective canonries among themselves, in accordance with canon law, and especially with the Constitution of Gregory XIII,

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motu proprio, which begins "Humano iudicio," that is, according to that law, so that Joseph would exchange his canonry with the canonry of Labis, which John Baptist held, and would receive a pension from the government; John Baptist, in turn, would obtain Joseph's canonry. In this way, they demonstrated that they were acting for the benefit of both themselves and the Church. Indeed, although John Baptist would lose the pension of 700 francs that the government had granted him after 36 years of service as a parish priest, he would possess a benefice of 2000 francs, while Joseph would receive a pension of the same sum, 2000 francs, and in addition, the Labis benefice of 500 francs. - But this man, being generous with his possessions in pious works, converted whatever he earned to the benefit of religion; he dedicated himself entirely to ensuring that the knowledge of divine things and the expertise in ecclesiastical law, as well as the light of his long experience, with which he was endowed, would benefit the Cathedral and the Diocese. They had already informed the Bishop of these arrangements the year before, when, on May 6, 1878, both signed an agreement drafted as follows: "Since, according to canon law..."

[*Latin ed. p. 11*]

The validity of the exchange depends on just causes for the exchange of benefices. Therefore, for the reasons explained in the letters sent to Your Eminence last year, the undersigned canon, who holds a canonry in the Cathedral Church of Tournay, resigns the said canonry, which he holds, in Your Eminence's hands, for the purpose of exchange, hoping and trusting that Your Eminence will grant him a canonry, which he also resigns today for the purpose of exchange, namely, John Baptist (or Joseph). Such letters were delivered to the hands of the Bishop on the morning of May 7th. On June 6th, those who were exchanging did not receive any response, and, being concerned, they recalled the act of the proposed resignation to the mind of the Ordinary, and the letter was delivered on June 7th. However, not until June 8th did the Vicar General of the Bishop of Tournay give a response, which stated: "Our Bishop gravely declares that he cannot approve the exchange proposed by you; rather, your proposal does not accord with his intentions, etc." Nevertheless, since those who were exchanging believed that, after a period of one month, the exchange had taken place in accordance with the Gregorian Constitution regarding the exchange of canonries, and had become a reserved benefice for the Holy See, they wrote a petition to be presented to the Pope, in which they requested the ratification of the completed exchange; and they sent the same document, along with supporting documents, to the Apostolic Nuncio at the court of the Government of Belgium, so that everything might be transmitted to Rome. The Ordinary was aware of this matter, and, inflamed with anger, he immediately ordered those who were exchanging to retract the petition; but they, in order to avoid such an excess of anger, signed the imposed retraction, in

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which each one declared that he had recognized the serious damages that the exchange would occasion. But before signing the retraction, on June 24th, John Baptist, so that there would be no doubt about his intentions, wrote a letter to the Apostolic Nuncio, in which he protested against the nullity of the imposed act, on the grounds of a false cause, and also of the Apostolic Reservation. Joseph added to what his colleague had done on July 15th, and declared that he had entrusted the matter to John Baptist, so that he might...

[*Latin ed. p. 12*]

12. The petition, presented under the name of "mimi," concerned matters relating to the exchange of benefices in Rome, and it promised that everything would be considered valid. From June 1878 to January 1879, the Bishop observed the petitioner's behavior, and hope arose that he would return to better counsels. However, at the beginning of January, he again revealed his intentions, stating that he wished to freely dispose of the canonry previously held by Joseph, with the favor of a certain Charles, whom he regarded with great affection. Therefore, he began to insist and exert pressure for Joseph to issue a new act of resignation: but Joseph declared that he would not issue such an act until one of the benefices offered to him was granted. On February 2, 1879, the Bishop, Dumont, conferred the canonry which Joseph had held upon Charles; and immediately, prayers were presented to the Sacred Congregation of the Council in the names of both the petitioner and the one exchanging benefices, requesting that the act of resignation, drawn up for the purpose of the exchange and signed by the petitioner in the hands of the Bishop on May 7, 1878, be approved by the Pontiff, in order that the canonries, having been relinquished with full rights, might be disposed of to the Holy See. The customary letters were sent to the Bishop on February 10, 1879, for information and a vote, requesting that, after hearing the Chapter, he report on the matter concerning the rights of the Orators. On February 20, Charles was installed in the possession of the canonry; but before the ceremony of installation took place, a written document was presented to the Dean of the Chapter, John Baptist, in which, citing the aforementioned reasons, he protested against the nullity of the installation. After the installation was completed, the matter was brought to the attention of all the canons by the Dean, and was delivered to the general vicar of the Bishop. On the following day, February 21, the Bishop received letters from the Sacred Congregation, containing information and a request for a vote, and on March 1, he himself informed Charles that he should not participate in the choir while the matter was pending. The Ordinary delayed the investigation; but in a Chapter meeting held on August 13, the Chapter issued a favorable opinion regarding the

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exchange. At the end of November, it happened that, through a decree...

[*Latin ed. p. 13*]

NULLITY OF NOMINATION 13. The Most Holy Order, by an edict, forbade Bishop Dumont from exercising any jurisdiction, whether spiritual or temporal, and appointed an Apostolic Administrator for the Diocese of Tournay, namely, Monsieur Isidore Joseph du Roussaux, Bishop of Eumenia, who, after the complete removal of Dumont, renounced, by Papal letters dated October 13th of the year 1880, the spiritual jurisdiction and the title of Bishop of Tournay, becoming the titular Bishop of that Diocese (1). Upon his arrival in the Diocese, having become intimately acquainted with all that pertained to the change, he wrote a letter to the Supreme Pontiff, dated December 30th, 1879, in which he commended those who were effecting the change, and especially John Baptist, to the Holy See, affirming that to him alone was reserved the judgment and the disposition of canonical matters. The Most Holy Order, having received this letter, replied, "Let him return to the Apostolic See." However, at the beginning of February, Charles presented a petition to the Most Holy Congregation, demanding that his nomination be declared valid, and that he be fully entitled to its benefits. This petition provoked new information and a new vote by the Congregation, and all things favorable to the change and to Charles' nomination were presented, and objections to Charles' nomination were raised. Just as the cause was about to be presented, in the month of January of the year 1881, both of the parties effecting the change passed away. Nevertheless, the Chapter and the heir of John Baptist insisted on the prosecution of the cause. Therefore, questions regarding the nullity of the nomination and the restitution of benefits received were raised, and were arranged in two separate matters. The heir of John Baptist presented "DISCEPTATI" (objections). Since, in the first examination of the cause, the Chapter had refrained from making deductions, the cause was entirely concluded by the heir of John Baptist (1).

(1) You also have these letters in Volume XIII, page 337.

[*Latin ed. p. 14*]

The argument concerning the invalidity of the nomination, which the advocate, in the initial part of his argument, sought to demonstrate by asserting that the nomination of Charles to the canonry previously held by Joseph was intrinsically null, placed, among several grounds for nullity, the following as the primary and most important: "that the disposition of the canonry remained safe for the Holy See."

The foundation for this proposition was provided by the aforementioned Constitution of Gregory XIII, "humano vix iudicio" (with scarcely human judgment), issued on January 5, 1584, in which the following is stipulated regarding resignations and exchanges, in § 7: "Concerning benefits which,

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from now on, will be conferred by the hands of Ordinaries, even Cardinals, who also possess from the Apostolic See the indulgences and faculties for this purpose, and by Legates even from the side [of the Pope], and by Delegates even of a special nature of this See residing outside the Roman Curia, even if, due to an exchange, it should happen, they must, within one month, complete the entire business of the remission or rejection of such a benefit; and if it is to be done by them, the provision of the resigned benefit must be entirely absolved according to the Apostolic and other Canon laws. And if, within three months from the day on which the provision was made to him, he publicly accepts it and takes possession of the benefit: otherwise, after the expiration of those months, his provision is null, and the benefit is considered vacant by that very fact. § 8. Those who are ordained and others mentioned above who have not fulfilled what is prescribed to them, in that case, are deprived of the power to dispose of these benefits, and their disposition is thereby reverted to the Apostolic See, so that it may be granted to others who are suitable, only by that See, in the manner and form mentioned above."

Based on these prescriptions of the Pontifical Constitution, it was asserted that, in the present case, the disposition of the exchanged benefits remained reserved for the Holy See, because a full month had passed without the Reverend Dumont giving any response regarding the proposed exchange. It is indeed established in fact that the letters of resignation and mutual exchange were delivered to him on May 7th; that those involved in the exchange recalled the matter on June 7th; and that the Vicar General of the Bishop did not write his response until June 8th. Therefore, in this case, the reservation in favor of the Holy See was truly valid.

[*Latin ed. p. 15*]

18. He inquired of any Bishop concerning the power to dispose of such benefices. The adversary attempted to place the act of commutation in a disadvantageous light in his treatise. But, considering that a small amount of time would absorb all other matters in this case, it is evident that everything required by law for commutations is present in this act. Indeed, according to the common opinion of the authorities, nothing else is required for commutations than a just cause and the legitimate authority of the Superior: a just cause must be indicated by the necessity or utility of the Church, or even by the sole utility of the beneficiaries themselves; Ferraris, Bibliotheca Canonica, under the word "resignation jseu renuntiatio," No. 57, and especially No. 60, where it is stated: "Indeed, not only the utility of the Church, but also the utility of the beneficiaries themselves is a sufficient and just cause for making a commutation before the Ordinary." Quaestiones Disputatae, 3, Article 5, § 1, No. 948: De et Murga, Gardas de de benefic. et seqq. In both cases of commutation, there was a most evident utility, in that Joseph received a pension greater than the one that John the

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Baptist possessed; whereas, John the Baptist, in place of a pension of 700 francs, made his canonry of 2000 francs, which Joseph resigned. But the Church could not have obtained a lesser utility, especially because John the Baptist, no longer being obligated to labor, could devote himself entirely to leading a life of prayer, to the benefit of the entire Diocese and the Chapter. The most valid testimony of this utility was given by the Archbishop of Mechlin, who, in letters dated June 18, 1878, declared to the Cathedral Chapter that it was a most useful thing: and Bishop Dumont, when he conferred the canonry of Labis upon him in 1876, stated that he had nothing more worthy of his merits in his hands. The Chapter also maintained that the utility to the Church would be the greatest, as it asserted and proved with arguments in two inquiries. The commutation, proposed according to the norms of law, was opposed by Eccl. Part. XI, Chapter IV, No. 45.

[*Latin ed. p. 16*]

16. The letter of the Vicar General, in which this single reason for rejecting the exchange was presented – namely, that it did not align with the intentions of the Bishop – is invalid. It is impossible to consider this single reason as valid, since the Pope has not entrusted the matter of admitting or rejecting the exchange to the Ordinaries, but rather has indicated to them the legal norm to be followed and to be expressed in writing, so that it may be clear for what reasons the exchange has been accepted or rejected; so that, in the case of acceptance, further proceedings may be initiated; and in the case of rejection, an appeal may be interposed. Furthermore, a substantial irregularity was found in the fact that the letter of response was not written by the Ordinary, but by his general Vicar: for the canons of Gardas, loc. scopi, cit., can. Num. - permutationes n., and also expedire, Eamdemque, cit. 74, state that the general Vicar should only follow the instructions of the Bishop in this special matter, as Ferraris 67 also states. However, since the argument of time presented the greatest obstacle, he attempted to undermine it by proposing five objections in his book. First, he argued that the Gregorian Constitution was to be considered null and void in this case, because it had fallen into disuse. But I rejected this objection based on the legal principle that every law must remain valid until another law, which abrogates it, is promulgated, or until –

But in the matter of resignations and exchanges, the same law that was given by Pope Gregory XIII has always remained in force, and the most wise Pope Benedict XIV has confirmed it everywhere in the Constitution "Ecclesiastica ministeria" (1). The aforementioned Pope Benedict XIV has published two Constitutions on this subject, the first beginning with "In usu iterum tern. dicio diei..." and declaring that resignations should be carefully examined to prevent fraud, and that those made with the intention of obtaining a pension are especially to be avoided: the first prohibits resignations made with the intention of obtaining a pension,

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while the second, beginning with "Ecclesiastica recesserit. Gregorii effectus Constitu- XIII Humano vix in- trema neficiorum factae cum reservatione sidis: per secundam autem pen- prohibitae Constitutione notatu" prohibits those made with the intention of obtaining a pension. The decrees of the Predecessor, Leges.

[*Latin ed. p. 17*]

ON THE NULLITY OF THE NOMINATION. 17 Nay, nor could the law concerning rights, which the Pontiff wished to reserve for himself, and concerning which He expressly decreed, ever have been abolished by custom to the contrary; and whatever may happen contrary to this, whether knowingly or ignorantly, is to be considered invalid and void. Finally, the actual existence of this law is testified by the recent authors of canon law, the Devoted Institute of Canon Law, Book 1, title 16, Title 8, Section 9, at the end. De Angelis, Canon Law, Book 1, title, actions of Canon Law 3. Ferrante, Elements of Canon Law, Book 2, in the work entitled "Preliminary Remarks," 5. Secondly, Charles asserted that this Constitution was never received in Belgium; but Leuren, in "Formularies of Benefices," question 398, contradicts him, stating that the Gregorian Constitution was received there, so that non-observance cannot be imputed to it, and that it has not been publicly promulgated in some parts even today. The same is stated by Ferraris, in the aforementioned place, number 111, with reference to the authority of Paris and Ventiglia. Finally, the most illustrious Henry, the founder of the Institute of Sacred Canon Law at Louvain, taught publicly that the Constitutions of Gregory XIII and Benedict XIV concerning resignations are to be observed; and thus it becomes clear, even among the Belgians, that the same law is observed as in Rome in this matter. Charles opposed the Concordat in the third place. But nothing can be gained from this. For, in law, it is held that, for those things which are not expressed in the Concordats, one must proceed according to the common law; but, in fact, we observe that the Concordat of the year... and the Ordinances for suppressing fraud and for the proper order, which are connected with such matters, and which, by being committed with malice, produce a subversion of justice, and some of which have been discovered through judicial controversies, pleased the blessed memory of Gregory XIII, our predecessor, in his Constitution which begins "Humano vix iudicio" - given on January 5, 1584, to decree and establish, with certain knowledge, that all resignations... We, therefore, confirm all such fraud and collusions in which acts, Volume XV, page CLXIX, and with mature deliberation, we confirm all that was said by Gregory XIII.

[*Latin ed. p. 18*]

48 ON THE NULLITY OF THE NOMINATION 1801 and the following sections regarding the restitution of dioceses and chapters, contain no men-

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tion of exchanges, and therefore, the common law must be followed. He who wishes to object to this should choose one of two propositions: either that it is never permissible to speak of resignations or exchanges in Belgium in any way, or that there is no certain law regarding whether resignations and exchanges should be accepted or rejected. Both of these propositions are found to be absurd. He argues that in Quarten, Charles appealed to the diversity of cases, stating: "The Pontiff wished then for the place to be devolved to the Holy See, when it is a matter of exchanges to be approved; otherwise, when it is a matter of those to be rejected, as in the case." But this is incorrect, for it is expressly stated in the Gregorian Constitution that the entire matter of remission or rejection must be completed within one month. Therefore, even when it is a matter of rejection, the matter must be completely concluded within that month; after which, the disposition of the benefice is reserved to the Holy See by that very fact. Furthermore, the adverb "omnino" and "eo ipso" completely exclude any possibility of purging a delay. This is also excluded because the right to render judgment on resignations and exchanges within one month belongs only to the Bishops by concession of the Holy See. For the Holy See has always wished to reserve such rights to itself. Therefore, it is incorrect to argue that this month should not be taken so strictly. For, as has already been stated, no author who has written about exchanges (among whom are Giraldi in *ius can.* II, Sect. 72, Leunis on the nature of resignation, loc. cit., *Quaest.* 398, and Ferraris, *absolvant*, loc. cit., n. 102) has dared to maintain the contrary, or to grant an exception even for the purpose of purging a delay; but all, with one voice, teach that the entire matter must be completed within one month regarding the acceptance or rejection of resignations and exchanges. Finally, the opponent argues that the defect of an exchange lies in the fact that a true benefice was exchanged for a benefice that was not strictly of the same kind. But in fact, the contrary is found to be true. For the canonry of Labs is a true benefice, and all benefices are...

[*Latin ed. p. 19*]

ON THE NULLITY OF NOMINATION: Those who have obtained a canonry in this manner do not become true canons. Indeed, as Cardinal De Luca states in *De Beneficiis*, book 4, number 5 and following, it is forbidden to make exchanges when a true and substantial benefice is exchanged for an empty and non-existent benefice (1). Ferrariè, in the cited passage, number 80, follows the same opinion. The case in which the disparity of benefices invalidates the exchange occurs when one of the exchangers suffers a loss; this is far removed from the matter at hand. Finally, Charles presented a no less futile objection, drawn from a written renunciation made by the exchangers in their first letter, which they sent to the Apostolic Nuncio on June 8. Furthermore, since that renunciation was imposed, the strongest argument to render it null and void is that, since the matter

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concerned rights reserved to the Holy See, any renunciation by the parties would be a means of undermining those very rights. In the second chapter of the first part of the allegations, the advocate argued that six other reasons demonstrated that the collation and acceptance of the canonry, favored by Charles, were invalid. And first, because the nomination favored by Charles preceded the resignation of Joseph. Granted, even if Joseph possessed the canonry at that time, the cited Cardinal De Luca's words are as follows: "Although, whether in the natural sense or even legally, when measuring matters that are indifferent with general rules, the designation of obtaining a more substantial benefice for an elderly or infirm person, whose vacancy was probably imminent, would seem clear and excusable, nevertheless, in the rules concerning benefices, it cannot be claimed that this invalidates the act. Indeed, with regard to the aforementioned Constitution of Pius V, whenever it is a question of an exchange, it addresses the case in which the exchange is made of a true and substantial benefice with an empty and non-existent benefice, which the canon lawyers call a 'benefice of a perch,' as declared by the Rota before Merlino, decision 329." This decision, to which Cardinal De Luca refers, is conceived as follows: "§. 8. - there - Nor was it said that the aforementioned chaplaincy is of no value, or of little value, and that it is a benefice of a perch, and therefore the exchange is not valid according to the Constitution of Pius V. For this would require that the benefice be fictitious and empty, having no fruits, which is not presumed by law."

[*Latin ed. p. 20*]

20. Of the INVALIDITY of the appointment, it is alleged that the Bishop had not yet decided to relinquish the benefice. Having done so, he incurred invalidity. This cannot be called into question, since he himself, who wrote the document of resignation for Joseph to sign, testifies: that he did so not before February 6, 1879, while the appointment was issued on the 2nd. Secondly, due to the pending litigation, which, had it not affected the appointment, certainly did affect the canonical institution of Charles, granted on February 20: for, before the installation ceremony, John Baptist denounced the document presented by the Sacred Congregation, alleging that it was a fraud. Thirdly, due to the unjust fear and deceit instilled. It is certain that great influence was exerted on the elderly and infirm Joseph by the fear of the Bishop's wrath, of which they spoke constantly, those who, under the name of the Antistite Rmi Dumont, demanded his resignation. And since Joseph resisted, mediators were appointed twice and thrice. Nor did Joseph consent to their proposals, except when it was falsely affirmed to him that the rights of the Holy See had been safely secured. Fourthly, due to the resignation in favor of. It is certain that the resignation of Joseph, to which he affixed his name on February 6 or 7, preceded the appointment of Charles, which was given on the 2nd. Therefore, Joseph, although not

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openly, nevertheless resigned the benefice in favor of Charles, who was a relative of the Bishop, contrary to the prescription of the Bull of St. Pius V of April 1, 1568, which begins "Quanta Ecclesiae" (1). (1) Pius V, the Supreme Pontiff, prescribes in the Constitution "Quanta Ecclesiae": "Furthermore, we command and forbid that bishops, or others, of the same day, April 1, 1568, §§ 4 and 5, and collators of benefices and offices, do not grant these benefices and offices to relatives or affines, or to those presented or patrons, whether ecclesiastical or lay, even if they are related by a false circuit of multiple marriages, or to those who are related to them, or to their relatives, even through a deceitful circuit of multiple marriages, or to anyone else, who would succeed to these benefices and offices by the resignation of the incumbents, or by others of their designation, or by any other means, or who would be designated by the affirmation or encouragement of any of the aforementioned, or who would be rashly attempted to be granted these, or who, among themselves, would make a promise, or who would have any intention whatsoever; and we declare that all of this, from now on, shall have no force or effect."

[*Latin ed. p. 21*]

The title "ILLITATIS NOMINATIONIS" was confirmed by Gregory XIII and Benedict XIV, and it declares that any such resignations made in the hands of the Ordinary are infected with incurable nullity. Fifthly, because of a simoniacal agreement, it is established that Joseph refused to sign the act of resignation unless he was first certain of the grant of the benefice by the Bishop, of which the promise of the grant constituted the true price of the act. Indeed, in this manner of acting, simony is held to be present according to Ecclesiastical Law, as stated by Ferraris, loc. cit., No. 46, Cardinal De Luca, benef. disc. 36, No. 6 (i), because of the omission of publication of the resignation within three months, which omission falls under the open sanction of the same Gregorian Constitution, which states: "And if anyone has been provided in this manner, let him publish it within the aforementioned three months; otherwise, the benefice shall be considered vacant, and he shall lose the benefits conferred upon him after the expiration of those three months, and shall not be considered to have confirmed his possession in any other way, and the provision shall be null and void." Therefore, even if other arguments of nullity are set aside, or if the matter of the exchange is considered to be not absolutely completed, or if there is a defect in the publication of the new resignation within three months, the same conclusion always follows; namely, that there was no valid nomination in favor of Charles according to the terms of the Gregorian Constitution.

In the second part of the argument concerning the restitution of fruits, three questions arising from the formula of doubt will be discussed: namely, from what time was there a place for the restitution of fruits? Regarding the first question, it must be kept in mind that the words of

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Cardinal De Luca, "and the simoniacal grace is made to the resignatory, even over the bank certificate, which, in fact, is a convention between the resignator and the resignated," are understood to refer to the actual deposit made for the solution of the pension, which agreements are considered simoniacal, as stated by Lotterus and others, etc.

[*Latin ed. p. 22*]

22. The invalidity of the appointment under which Charles, John Baptist, was inducted into the canonry, due to rights reserved to the Holy See, and also due to the pending litigation, led to the declaration that that installation was invalid. Furthermore, since on the following day the letters from the Sacred Congregation concerning the formation and the vow were delivered to the Bishop, the Bishop himself warned Charles on March 1st not to attend the choir. Given these circumstances, Charles could not, in any way, have legally enjoyed the benefits of the canonry from March 1st. Therefore, Charles acted entirely in bad faith, since it is clear that no good faith can be attributed to him regarding the receipt of benefits, when he had been warned not to attend the choir due to the pending litigation, and by that very act, he was no longer acting in good faith. Nor can he claim any assistance from those who were present. For the Chapter permitted this for a short period of time, so that he might behave in a manner pleasing to the Bishop. But even his continued presence in the choir could not have assisted him, since he knew perfectly well that the validity of his appointment was being called into question. In response to the question posed, the answer was: the benefits must be returned from March 1st, 1879, because from that day he had official notice of the litigation initiated by the Ordinary, and from that day he began to receive benefits. Therefore, he is obligated to return all benefits delivered to him. He undertook this obligation himself, through the formula of the oath taken upon receiving possession, in which it is stated: "and to the same Church, I give and promise to return without complaint whatever of the things assigned to me I may receive, if it should happen that I am deprived of them, or if they do not pertain to me at all; and in that case, I wish to be considered from now on as not having received them." In response to the third question, it was stated that the benefits already received should, at least in equity, be returned to the heir of John Baptist, who had resigned the canonry from Joseph on May 6th, 1878, and had received the benefits from that day, unless the Bishop's hasty and untimely response had prejudiced the possibility of a change. It is also important to note that the Apostolic Administrator's letters, dated 30...

[*Latin ed. p. 23*]

NULLITATIS NOMINIS 23 Decembris 1879, mense Ianuario 1880, rescriptum, ortum ex favore Ioannis Baptistae, recurrat ad Datam Apostolicam; procul dubio, hic canonicatus obtinuisset, nisi inconsultam instantiam

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protulisset Carolus, quae causae discussionem inevitabilem reddidit. Carolus patronium proferret – Adducens eius patronus serotinam documentorum traditionem, quae impossibilem ei reddidit defensionis ac Summarii confectionem, dilationem saltem mensis unius postulabat. Itaque Emiss Patribus proposita sunt enodanda Dubia: I. An constet de validitate nominationis et collationis canonicatus favore Caroli in casu? Et quatenus negative II. An, a quo tempore, et cuius favore sit locus restitutioni fructuum in casu? Resolutio: Eminentissimi Patres in plenariis comitiis diei 6 Augusti 1881 responsa dederunt: Ad I, negative. Ad II, affirmative a die adeptae possessionis, in reliquis dilata.

Causae Prosequutio: Propter novae audientiae petitionem a Carolo oblatam inter praescriptum tempus, eiusdemque concessionem, novae causae propositioni locus factus est, in qua rem funditus Carolus pertractavit.

Caroli defensoris deductiones: Antequam ad causae meritum gradum faceret defensor, duas proponebat praeiudiciales quaestiones, quibus ostendere contendebat de validitate nominationis Caroli nullum institui posse iudicium. Primam eruebat ex iuris axiomate « spoliatus ante omnia restituendas est » Narrabat enim, post nominationem diei 2 Februarii 1879, Carolum die 20 in possessionem canonicatus immissum fuisse a Capitulo, eumque tamquam canonicum se gessisse us-

[*Latin ed. p. 24*]

24. The nullity of the nomination was declared on the month of November of that same year. This is indeed true, to the extent that the Chapter itself was making distributions among the present canons. However, on the 30th of November, when Charles had requested the canonical insignia, he was informed that he should no longer attempt to attend the choir; otherwise, in his presence, the other canons would cease their choral services. Charles's protests were in vain: for the Chapter had gone so far as to warn the Government not to continue paying the canon's income to the absent canon. Thus, a deprivation has been established, and in its presence, it is not permissible to dispute the cause, unless the deprived person is first restored, as stated by Reiffenst. in lib. II Decret, tit. 13 de Rest. Spol. §§ and 10; Pirhing, Lib. II, Tit. 10, §§ 6, 7, 18, and 19. Nor can the Chapter appeal to the pending litigation concerning the ownership of the benefice. For it is established that Charles was inscribed in the list of canons, and as such, he received the fruits of the benefice as of the month of June 1880. Therefore, restitution is urged, according to what is stated by Reiffenst. in lib. II Decret, tit. 13 de Rest. Spol. §§ 49 and 56. The second prejudicial question was posed as follows: "Whether, given the defect in the action before the Chapter of Tournay concerning the litigation, and the restoration of Charles to his canonical position, the matter of the controversy ceases to be subject to judgment." And to demonstrate that there was no action

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before the Chapter of Tournay, it was argued: that the Chapter had no specific right to be placed in a disadvantageous position through questions concerning the validity of Charles's permutation or nomination. The Chapter could not generally claim an interest in ensuring that a canon, whose nomination is tainted by nullity, is not received into its ranks. For the canons have no part in the nominations; at most, this would be admitted by the Bishop, if the matter were in judgment. This is all the more evident from the fact that within the Chapter itself, on February 20, 1879, when Charles was to be admitted to the canonical position, and when John Baptist had made a protestation, with some hesitation among the canons, the opinion prevailed that the matter did not concern the Chapter in any way, as was expressly declared.

[*Latin ed. p. 25*]

ON THE INVALIDITY OF THE NOMINATION 25. This defect in the action cannot be remedied in the Chapter, nor can it supply a successor to John Baptist, which would only be valid in judgment if he secured the right to the restitution of fruits. But since he cannot provide such proof, he must be rejected by the Chapter. Regarding the questions concerning merit, he promised to demonstrate beforehand that the exchange proposed by John Baptist and Joseph was utterly null; that it contained only the intention of obtaining profit, and was tainted with the stain of simony. Indeed, Urban VIII, in Chapter "quaesitum est" concerning exchanges, declared that "exchanges of things cannot be lawfully made, especially when preceded by a pact which contains a flaw concerning spiritual matters, namely, simony." He stated that exchanges are permitted only out of necessity or for the benefit of the Church; but in the case under discussion, neither necessity nor benefit to the Church was found; for the same Urban VIII permitted the transfer of persons from one place to another, so that those who are less useful in one place might be able to exercise themselves more usefully elsewhere. But since this rule establishes how the benefit of the Church is to be verified, exchanges carried out under the same pretext are already excluded, as in this case. In the exchange that was proposed, it would have resulted in damage rather than benefit to the Church, because John Baptist, being so occupied with ephemeral publications, would not have been able to attend to the affairs of the Church! To this must be added that the exchange was made entirely without authority, and remained within the limits of a simple contract. Therefore, when an attempted exchange occurs, it is not considered a valid exchange. Furthermore, the exchange was carried out to the detriment of the rights of the Bishop, who is the ordinary bestower of benefices. Pirlring, in book I, title 9, chapter 3, teaches that no resignations are valid which are made by the infirm under the threat of death. The aged are considered to be infirm, because they are subject to infirmity. Therefore, since Joseph was an old man, his resignation,

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for the purpose of the exchange, should also have been considered null, according to this principle.

[*Latin ed. p. 26*]

26. OF THE NULLITY OF THE DESIGNATION. Therefore, since in the exchange of the Bishop, there was a lack of consent, since a larger benefice was held by the senior, and since the matter concerned benefices under the same roof, it could never be proven that the matter was one of an exchange or of an attempted exchange. Attempting to revert to the previous disposition of the benefices of Joseph and John the Baptist, he sought to exclude it, bringing forward the Concordat of the year 1801, arguing that, according to its norms, the very erection of the Chapters had been within the power of the Bishops, and that all matters concerning the Chapters had been entrusted to the Bishops, and that the Pope had relinquished any reservations in favor of the Holy See. However, things were later found to be different: Bouix of the Chapter wrote that in France, the Bishops freely assumed the right to confer benefices, and that the Holy See had not yet made any claim regarding this. The strongest argument in this matter, he claimed, was the Bull in which Gregory XVI, of blessed memory, completed the erection of the Diocese of Bruges (Bull. Rom. tom. 18, page 369). In it, with the exception of the dignity of Archdeacon, which the Pope reserved for himself, it was stipulated: "The remaining canonical dignities, prebends, and mansions are to be freely conferred by the Bishops currently in office, all reservations and conditions ceasing." Moreover, it is expressly noted that this is done in accordance with the rights and privileges with which the Chapters of other similar Cathedral Churches existing in the Kingdom of Belgium enjoy and make use. Therefore, it is unnecessary to bring forward the Gregorian Constitution "Humano Vix Iudicio." But, having set aside this minor argument, other points should be noted. And first, that the Constitution of Gregory XIII, according to several authors, does not seem to have been truly accepted in many places. Indeed, the most distinguished Craisson, whose work on canon law has never been approved, after having presented the rules concerning exchanges derived from the Gregorian Constitution, added the statement: "These are noted, but do not permit."

[*Latin ed. p. 27*]

NULLITY OF NOMINATION 27. Appeals! are not admitted to the Holy See, not only by law, but also by the fact that nothing exists to be brought forward for examination, since the first letter of exchange truly reached the hands of the Bishop on May 7th: and if it did not, the useful month could not have run its course. And if it were delivered even on May 7th, the Bishop's response would remain valid within the prescribed term, because the term of time is not counted in time, especially in cases of aversion and penalty (47 ff. on words of obligation). Although it is an aversion, it does

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not restrict Episcopal rights, especially since it is evident from the facts that the Bishop, in exchanging, did not ignore the force of the law. Regarding the other points concerning the nullity, it is first alleged that the collation of the canonry preceded the resignation of Joseph. The document presented to the Government, which bears the date of January 30th, is cited as proof, which preceded the collation. Also cited is the context of the resignation itself, in which the resigning party affirmed that he was confirming his already made resignation. However, in this matter, since we are dealing with a contentious benefice, to which one can resign without the authority of a superior, even after its collation (Abbas in C., quod in dubiis N. 4, h. t.; García, N. 249; Reiffenst. ad lib. I, Decr. de remun. Tit. IX, § 18), the posteriority of the resignation does not prove anything. The fear instilled in Joseph, which is exploited to his detriment, is excluded by the declaration issued by him on March 10, 1879 (1). In law, the existence of fear must be required (1). Since John Baptist impugned the date of Joseph's resignation, as well as his freedom, on March 10, 1879, Joseph's declaration was published, as follows: "Since certain things have been circulated" (understand, concerning my last resignation), "it is necessary that before witnesses, the Very Reverend Fathers and the Reverend Doctor, I declare that I am fully and without any suggestion of fear." "1. That I have withdrawn from my intention to cede my canonry to the Very Reverend Doctor John Baptist; 2. That I have renounced this intention after acquiring a more complete knowledge of the matter, which previously was not free from error; 3. That I sincerely deplore the consequences that have resulted from this, and that I am, and will always be, fully devoted to the Episcopal Authority, which I esteem and venerate. Indeed, I declare that this declaration is published neither at the suggestion, nor at the request of the Bishop of Orte, much less suggested or requested by those who administer the affairs of the diocese with him."

[*Latin ed. p. 28*]

28. The allegation of the invalidity of the resignation in nas, due to some great evil, is entirely unfounded, as no trace of such a thing can be found. Furthermore, even if fear were to exist, it would not benefit the adversaries, as Pirhing, in the cited work, § 10, teaches that contracts, whether onerous or gratuitous, renunciations, and similar acts, which are made even under grave and unjust duress, are, both according to natural and positive law, regularly valid by law alone.

No better are the objections raised by Ioseph, which are based on the alleged renunciation in favor of, and on the condition attached to the renunciation, namely that the grant of the benefice to Labis would be conceded: otherwise, he claims, he would not have resigned. However, the same author (Pirhing, loc. cit., § 79) has written: "If the renunciation of the benefice is made simply and absolutely, even if a condition is attached regarding the

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granting of the benefice, namely that it be given to a certain person, and that person has been admitted by the Bishop, the renunciation is immediately valid and effective."

The same must be said regarding the second condition: for, according to the opinion of many doctors, the Bishop can accept the renunciation and grant the benefice; and reject the condition (Reinffest, Lib. I Decret., de renunc., § 120). It was asserted that there was no pending litigation, because on the day that the grant of the canonicatus took place, a simple notification of the matter was pending with the S. O. [Sacra Congregatio], which does not constitute a contentious matter (Reiff., Lib. 1, tit. 9, de renient., § 56). Furthermore, it was claimed that everyone had solemnly renounced the litigation on June 24th before the Bishop.

The objection regarding the defect in the publication is no more valid than the objection regarding the lack of a response within a month, because the same reasoning applies. Many of the clergy, worthy in faith and character, testified: "This declaration was made known to Ioanni Ba- by the present declaration, which was written » ptistae, so that his ignorance could not be » adduced."

Through such a declaration, the defenders of Caroli sought to establish the truth of the resignation made on that day, and to defend the freedom of the resignation from the irregularities alleged in February. On the contrary, the advocates of the Chapter argued:

[*Latin ed. p. 29*]

NULLITY OF THE CLAIM 29. In the Tournay diocese, nor in other dioceses of Belgium, publications of this kind have been in use. Finally, attempting to demonstrate Charles' good faith, he argued that he had not requested the canonry himself, nor did he reside in Tournay before obtaining the canonry. He claimed that Charles had taken possession of the benefice as a rightful canon, and that only on March 1st did doubts arise regarding the validity of the appointment. In this case, the provision of Rule 65, section 6, as cited by Pirhing, Volume II, title 12, section 5, would apply: "If a possessor in good faith has doubts as to whether the thing is his or not, and after diligent inquiry he cannot ascertain the truth, he may, in the meantime, retain the thing and use it and enjoy it, until it is clear to him that it belongs to another: for in such a case, he must be considered to have the better right." Since all circumstances indicate that Charles should be considered a possessor in good faith, the procedure should follow that outlined by Reiff, Volume 11, title 12, section 63: "Possession in good faith gives the possessor the right to enjoy the fruits of the thing so possessed, and he is not obliged to restore those fruits to the true owner afterwards, even if they have already been consumed." Finally, he argued that even if Charles were obligated to restore the fruits, they could not belong to the heir of Canon Falise, who has no legal right to claim them, since the heir,

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in this case, is not the heir to the fruits of a benefice that the original holder never obtained; nor to the Chapter, which has not made any request for the fruits. Therefore, since there is no person to whom the restoration of the fruits could be made, it must be held all the more strongly that the fruits of this kind should be transferred to Charles, as a possessor in good faith.

RESPONSES OF THE DEFENDERS OF THE CHAPTER AND THE HEIR OF JOHN BAPTIST. The defender first addressed the preliminary questions raised by Charles' defender, and he challenged the claim of spoliation and the requested restitution, declaring that without it, the trial could not be instituted. Due to the precarious state of the diocese at that time, when the Most Reverend Dumont, having been appointed as Administrator Apostolic in the exercise of jurisdiction, and due to the duties that...

[*Latin ed. p. 30*]

30. THE INVALIDITY OF THE NOMINATION: The plaintiff had demonstrated, through the actions undertaken by him against the Chapter, and finally through the pending litigation, the necessity of the provision issued by the Chapter to prevent him from participating in the choir. However, this action by the Chapter had not introduced anything new, but had merely followed the instructions of the same Prelate Dumont, who, from March 1st, that is, the tenth day after he had taken possession of the canonry, had ordered Charles not to attend the choir. And indeed, with the exception of the months of June, July, and August of the year 1879, during which, out of tolerance and a desire for peace, the Chapter allowed him to attend the choir, he had never been present at the choral services. But even with these exceptions, Charles could have complained of being deprived of his rights, since the Chapter had appointed another in his place and admitted him to the choir. However, the defender argued, it was irrelevant to consider such a complaint, since Charles still possessed the canonry, the validity of whose collation was in question, and that the right to receive the fruits thereof should be determined based on the validity or invalidity of the nomination and collation. Furthermore, a decisive argument existed to reject such a claim, namely that no mention of it was found either in Charles's petition or in the pleadings of the lawsuit, and that it had only arisen at the very end of the trial. The plaintiff maintained that the claim was absurd and should be dismissed. Indeed, since the question of the validity of Charles's nomination had been raised, it was of the utmost importance for the Chapter to have it determined whether the nomination and collation were null and void, since it was not permissible to receive someone as a canon within its ranks if he was not legitimately appointed. Moreover, it is established by the Sacred Roman Rota in Decree 289, number 77, part 6, Recent, that even when dealing with an offense

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against the Church or its statutes, in order to prevent someone from being admitted contrary to the provisions of the law or the statutes of the Church, the Chapter can oppose it. The most compelling reason for the Chapter to pursue the lawsuit was, in fact, the right to receive the fruits that Charles was obligated to restore. Such a reason could not have existed.

[*Latin ed. p. 31*]

ON THE NULLITY OF THE NOMINATION: 3i, and while the parties were still living, the right of the Chapter arose to demand the restitution of its fruits; but with the death of both, the right of the Chapter arose to demand the restitution of its fruits in its favor. Furthermore, the rights of the Chapter, when there is doubt about the validity of a nomination, are clearly established by the formula of the oath (1), to which Charles himself submitted when he obtained possession of the canonry. Regarding the merit of the cause, it was alleged that the attempted exchange was not a true exchange, but this objection was mixed with sophistry. In the definition of exchange given by the authors, it is described as a reciprocal resignation of benefits made between the exchangers with a just cause and with the authority of a legitimate Superior (Ferraris, loc. cit., no. 57). The exchange of benefits, on the contrary (which is the same as an attempted exchange), takes place when the exchangers act with private authority. The exchange of benefits must be done with the authority of a legitimate Superior; therefore, if it is done with the private authority of the exchangers, it is simoniacal (Idem auctor, ibid., no. 61). In the case in question, the exchangers did not complete the exchange between themselves, but offered the act of exchange to the legitimate Superior for the purpose of obtaining approval, and when the useful month had elapsed, they left the matter to the Pope. It is not permissible to doubt about the day on which the first letter was delivered on May 6th, in the hands of Bishop Dumont, because neither he, nor his Vicar General, nor Charles had previously raised any doubt about the matter; rather, they maintained the day of delivery as indicated by John Baptist. (1) The formula of the oath, which is used for the Chapter of Tor-» illo rasu from now on, is as follows: "Received. To you, my Lords, Dean and Chapter, I, now and in the future, whenever I am required, I swear and promise to give you a suitable and sworn caution, if, and if, for any reason, there should occur a restitution of the revenues, or of anything else, that belongs to your Church, and to keep your Church completely and entirely free from all occasions, and to give you, as you may deem fit, a caution for the restitution of the fruits and revenues that I have received or will receive from the assigned office, in the event that any claim should arise regarding the said office, and that I should receive the said office, I will not, in any way, evade the obligation of returning the said office to you, and I will have the right to return the said office to you

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according to your command."

[*Latin ed. p. 32*]

32. THE INVALIDITY OF THE NOMINATION. It was objected that the change was invalid because it was made by an old man. But it was proven by John the Baptist that this old man was of sound mind at the time when the change was made, and that he had already, a year before, expressed his intention to make the change. Therefore, he could not in any way be considered infirm in his last moments. Furthermore, the text of Urban III was cited; but it was not demonstrated that from this passage, changes under the same roof are prohibited, and that they become subject to invalidity. However, the benefit to the Church in this case was so evident from the proposed change that not only the parties involved, but also the Chapter, the Archbishop of Mechlin, and the new Bishop testified to it. Moreover, the objections regarding the exchange of a benefice with a pension, which remains in place of the benefice, or the exchange of a benefice with a smaller one, are not valid. For it must be kept in mind, in the matter under consideration, that those who receive pensions completely relinquish the benefice, which is immediately granted to another. Therefore, because nothing of the original benefice was retained by the pensioner, and because the Chapter was concerned, the Reverend Labis established four prebends, so that the pensioners might again be included among the canons. But the prebends of Labis are true canonical benefices. The exchange of a richer benefice with a poorer one was prohibited by the canons, so that no one who held a richer benefice would suffer a detriment, or so that simoniacal agreements might not occur between those exchanging benefices. In the case in question, the most evident benefit to both canons was apparent. If the exchange of benefices between the parties involved were to be considered tainted by simony, because of a prior agreement, or because of a desire for personal gain not separated from the benefit of the Church, it would be necessary to maintain: that there could be no trace of simony in the act of exchange. The exception regarding the Constitution of Gregory XIII, which was never publicly promulgated in Belgium, was shown to be unfounded from the work of Benedict XIV on the Diocesan Synod, Lib. XIII, Cap. 24, no. 8 (1). (1) In the aforementioned work, we find: "The same Constitution of St. Pius V, of which we have spoken thus far..."

[*Latin ed. p. 33*]

SECTION 35. The same must be said concerning the concordat: for in order that the concordat might abolish such Apostolic reservations, it ought to have expressly mentioned them. Otherwise, it would have to be shown, either that, according to some other law, resignations and commutations are abolished among the Belgians, or that, with regard to whether they are to be accepted or rejected, no certain rule exists, and that everything is left

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to the judgment of the Bishops, who are permitted to reject commutations offered to them, without any other reason than their own will, namely, because they do not suit their intentions. But the matter is even more serious. For it is known that in the new institution of the Cathedral Chapter of Tournay, held on April 10, 1802, the reservations and limitations that existed before the change of government were maintained. Recent examples exist of the use of Apostolic reservations in the very Diocese of Tournay. For instance, the Holy See constantly provides for the collation of the Deanery. Also, the Holy See provides for the nomination of the Dean Parochial of Saint Elizabeth of Mons. Also, the rules of the Chancery are observed, and the Pope is named in the prebends with the person who has deserted the prebend. Furthermore, as we have already mentioned, this gave rise to grave questions which arose before the Ordinaries, concerning whether, in the case of controversies, good faith alone suffices, as was demonstrated in a matter brought before the Sacred Congregation by the Archbishop of Mechlin in 1683, namely, whether the disposition contained in that decree prohibits the conferring of benefices that have been resigned in the hands of the same Bishop, and whether all fraud is to be excluded, which is not at all included in the meaning of the Papal Constitution. The very statement of the matter excludes the thesis that the Bishop or the person resigning are relatives, or that there is no knowledge of this in Belgium. Furthermore, the force of the Constitutions concerning commutations of benefices was then the cause of a certain resolution in Feretrana on February 25, 1673, in which the Congregation responded. But when it is affirmed that the institutions concerning resignations and commutations are respected, it is clear that the very Pope, Benedict XIV, in 1754, conferred the parish of Saint Remigius in the town of Gilly, then subject to the Bishop of Tournay, and it was discovered that the aforementioned vacancy had been filled by the hands of the Pope himself. In this resolution, the proposed resignation was not at all congruent with the question, and in the context of the Bull, it was declared: "Benefices in the Roman Curia are reserved to the Seat, and are validly conferred only by the Pope." This strongly confirms the Apostolic reservations in resignations, which have been maintained among the Belgians for centuries. It seems that the Congregation's opinion, as stated in *Beneficiorum ne*, Vol. XV, page CLXIX, 8, was that the commutation of benefices...

[*Latin ed. p. 34*]

34. DOES THE NAME IMPLY NULLITY? Resignations, when made with the consent of the resigning parent, are valid, provided they are presented before the Pope, according to the Constitution of Pope Pius V, which begins with the words "Quanta Ecclesiae." Therefore, (the defender argued), if even minor reservations are observed with diligence, how can we say that greater reservations, which have been directly assigned to

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the Pontiff in the Constitutions, are subject to abolition by a concordat? However, (he continued), even if changes were expressly included in the concordat, and even if anything more extreme were permitted, there always remains the inescapable argument, which produces an incurable nullity of the nomination. Indeed, it is certain that on June 18th, the parties involved sent a petition to the Apostolic Nuncio, offering it to the Pope, in which they declared that the benefits exchanged were reserved to Him. It is also certain that Bishop Dumont was aware of this, and that, having understood the gravity of the matter, he immediately sought to have the exchange retracted by the parties involved. Therefore, it was known to the Bishop that the right sought by the Holy See could be invoked, and that it could be decisive. However, by the nomination and collation of the canonry with the favor of Charles, Bishop Dumont had clearly disposed of this right. Therefore, his action contained a flaw that rendered Charles's nomination incurably null. Having concluded his responses, the defender initiated a new discussion regarding the fruits of the exchange, concerning the chapter reserved to the Holy See, to which the fruits were to be restored. He had delayed his response on this matter, which was reserved to the Holy See. Therefore, stating that he would also act on behalf of the Chapter, he pursued various hypotheses for restoring the fruits, favoring either the heir John Baptist, or the heirs of Canon Joseph, or the successor in the benefice, or the Chapter itself. Regarding the heir John Baptist, he presented the same argument of equity that he had advanced in the first instance; but as for the heirs of Canon Joseph, he argued that they were in no way entitled to the fruits that had been received by Charles.

[*Latin ed. p. 35*]

3 5. The nullity of the nomination was demonstrated. Those who maintain the contrary thesis (thus, themselves) assert that Joseph returned to his benefice because the exchange was not perfected within the month, or because it was rejected by Riho Dumont; and that, concerning this same benefice, he made a new resignation in February 1879, which, being subject to several nullities, left the benefice in his possession, the fruits of which, according to the common rule, must be restored to the heirs. But the argument is based on a false premise. It assumes that, because the exchange was not perfected within the month, each of the exchangers returns to his own benefice. But it is certain that benefices become vacant by simple resignation, *De Nigra de vacat, benef, et pens. eccl. Lib. I Cap. 2 num. 41; De Murga de benef, quaest. 9 num. 38; Garcias pag. 11 Cap. 3 num. 3*. It is also certain that the Pontiff expressly decreed that those who have not perfected "what is prescribed to them" are, in that case, deprived of the power to dispose of these benefices, so that they are returned to the Holy See, so that "they may be granted to others who are suitable, only in the manner and form prescribed." Indeed, if these benefices were not always

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vacant, it could not be conceived how the Holy See could grant them to others who are suitable. (I) Therefore, it could never be the case that the argument of the Defender of the Chapter holds: "But the Pontiff reserved the power to resume [the benefice] for himself." The Pope Gregory XIII, in § 8 of his Constitution, conceded benefices to those who had resigned for the purpose of exchange. In this case, those who exchange benefices would be deprived of their own benefices, and those who have not perfected the exchange, and to whom the disposal of these benefices has been denied, would be deprived of them; and, by this very act, the same prescription would be applied to them, so that they would have to restore to the Holy See the fruits which they had received from the day the resignation was promulgated; for the Apostolic disposition would exist - let it be so that the proposition is to be referred back to the day of the resignation. Let it be so that the Bishop did not respond within the month to the exchange; let it be so that the approval or rejection of the exchange by the Bishop is excepted, and that, after the month has passed, the benefices are, as if by a postliminy, returned to the exchangers, so that both exchangers must restore the fruits which they have already received, so that they may receive what is due to them from the exchange, and so that they may again take possession of their own benefices. They must restore...

[*Latin ed. p. 36*]

36. THE INVALIDITY OF THE NAME "SEPHUS" having resigned, the canonry became vacant from the day the resignation was issued, and it remains vacant. Therefore, Joseph had no right to the fruits of the resigned canonry, nor could he transmit any right to his heirs. Furthermore, since Joseph has only received from the pension, obtained on February 2nd, the amount he would have received from the benefice, it would be unjust to decide that he retained a double status, both as a beneficiary and as a pensioner, with a double receipt of income. Regarding the successor to the benefice, the defender argued that he could not be considered to have a right to the revenues. Indeed, the authorities teach that, upon the death of a beneficiary, the fruits not yet collected, by common law, belong to the successor to the benefice (Ferraris, *verbo* "Fructus Ecclesiae," X, answer 9; Rota in Burgen, *Canonicatus super fructibus*, July 28, 1645, § 4, before Millesi). In this case, however, it is not a matter of fruits not yet collected by the predecessor, but of revenues from the canonry itself, which is vacant by law, and which have been received by a possessor acting in bad faith. Therefore, the Chapter, to which both common law and the local custom are favorable, must maintain its position, especially when it is a question of fruits received by a canon who was not actually a canon, and who did not perform the choral offices. The rule must be applied that is stated by Cardinal De Luca in *De Canonicis et Capitulo*, Discourse No. 15, namely, that canons are to make distributions to those who are absent, which the

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absent canons lose, for the greater service and worship of the Church, and so that this is not neglected, and that those who are interested in a greater emolument may be drawn to it. The same is stated by Ferraris, *verbo* "absens," Article 2, No. 9. Our Chapter must observe this, for when a position is vacant, the fruits of the vacancy during that time accrue to the other canons. Those canons are to assist the Chapter in this matter. This also contains an absurdity, namely, that benefices remain vacant, while the Pontiff, for the sake of a change, having resigned the benefice, reserved for himself the power of disposition regarding the benefices, which is unthinkable. Therefore, even in this argument, there is a deficiency, and it seems to deviate from the Bishop's judgment, since it is necessary for the Bishop to approve or reject within one month. This is the case, and it is also clear to us.

[*Latin ed. p. 37*]

37. The nullity of the designation also accounts for the greater labor involved, from the day of the designation of Carolus, and especially after the death of those who make exchanges. For three canonries were held to be vacant. Finally, the restoration was to be carried out with the favor of the Chapter, as stipulated by the very formula of the oath. After these documents were presented by the defenders, the proposed questions were to be resolved. I. Whether one should adhere to the decisions in the first and second instances in the case of *Ì*. And to what extent? II. Whose favor is required for the restoration of the fruits in the case? The Most Eminent and Reverend Fathers, in the General Congregation on March 18, 1882, gave the following answers: To I, affirmatively and extensively. To II, the favor of the Chapter, and more.

Therefore, from ALL OF THE ABOVE:

I. Exchanges of benefices permitted by Canon Law must be carried out in strict observance, and they must be carried out according to the norms of the Constitution of Gregory XIII, *supra*, which begins "Humano vix iudicio."

II. The Gregorian Constitution is to be considered as universally accepted in all places.

III. Through concordats, the Apostolic Reservations contained in the same Constitution have not caused any prejudice, unless a special mention exists in those same concordats regarding resignations and exchanges.

IV. According to the precepts of common law, for the validity of exchanges, a just cause is required, which is the necessity or utility of the Church. The utility of those who make exchanges can be considered a just cause, provided that the utility of the Church is also found in it.

V. To complete the matter of the exchange, a month must be given to the Bishops and other bestowers, within which they are obliged to either

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accept or reject the exchange. After the useful month has passed.

[*Latin ed. p. 38*]

38. Once the act of nullification of the nomination is declared, the disposition of the benefices is immediately to be reverted to the Holy See, which reserves to itself the right to grant them to others who are suitable.

39. Until the Holy See has made a decision regarding the benefices relinquished for the purpose of exchange, the same are to remain vacant, and no one is to be permitted to dispose of them.

40. The renunciations of parts, already offered in prayer to the Holy See, do not infringe upon the rights of the same Holy See, and are to be considered as if they did not exist; even more so if they were extorted through fear or violence.

41. Regarding benefices, the disposition of which has been reverted to the Holy See, new renunciations are not intrinsically valid; nominations and collations contain a defect, which affects them with an intrinsic nullity.

42. Renunciations also made in favor of others are to be considered as null before the Ordinaries.

43. The same is to be said of renunciations to which a simoniacal agreement has been added.

44. The same is to be said of renunciations for which publication was lacking within three months; for if publication is lacking, the benefices, by the very law, become vacant in the Curia, and are reserved to the Pope.

45. The fruits of benefices, for the collation of which no decree is issued, are to be returned, even during the pendency of a legal dispute.

46. The restitution must take place from the day on which the beneficiary had knowledge of the pendency of the legal dispute, for on that day, good faith is considered to have ceased.

47. The beneficiary is to be held more strictly to restitution if he was absent from the choral offices, for the reason of services rendered does not assist him.

48. The common rule is that the fruits not received by the predecessor are to be added to the successor in the benefice, or to the Chapter, by law.

49. However, in these cases, the customs of the place are to be observed, according to which the perception of fruits proceeds.

[*Latin ed. p. 39*]

39 FROM THE SACRED CONGREGATION'S DECREE of the Index, dated the second day of July, 1882. The Most Eminent and Reverend Congregation of Cardinals of the Holy Roman Church, by order of the Most Holy Pope Leo XIII and the Holy Apostolic See, concerning the Index of books of false doctrine, and their condemnation, prohibition, expurgation, and permission throughout the Christian Republic, held in

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the Vatican Apostolic Palace on the 10th of July, 1882, condemned and condemns, prohibits and forbids, or orders that the following works be referred to the Index of Prohibited Books:

SORELLI, GIAMBATTISTA. *Studi Filosofici Sociali*. I. *La solapossibile Religione dell'avvenire*. II. *Appunti sociali sul matrimonio e sulla famiglia*. Seconda edizione con Appendice. III. *Studi sulla prostituzione*. Rome, 1881.

MAMIANI, TERENZIO. *Delle Questioni Sociali e particolarmente dei Proletarie del Capitale*, three books. Rome, 1882.

RENAN, ERNEST. *L'Ecclesiast*, translated from Hebrew with a study on the age and character of the book. Paris, 1882.

GREGOROVIUS, F. *Atenaide, storia di una Imperatrice Bizantina*. Translated from German by Raffaele Mariano. Rome, etc., 1882.

The author (Chaillot, J. L.) of the work entitled: *Pie VII et les Jésuites d'après des documents inédits*, which was prohibited by Decree of April 3, 1882, is included.

Therefore, no one, of whatever rank or condition, shall dare to publish, or to read or circulate, in any place and in any language, the aforementioned works which have been condemned and prohibited, but rather, let the ecclesiastical authorities take care that they are suppressed, or that they are corrected of their heretical errors.

[*Latin ed. p. 40*]

40. DECREE: It is to be held that the Inquisitors are bound to hand over [evidence] to those indicted in the Index of Prohibited Books, under penalties. These matters, having been reported to the Most Holy Lord Our Pope Leo XIII through me, the undersigned S. L. C. from the Secret Archives, His Holiness approved the Decree and commanded it to be promulgated. In witness whereof, etc. Given in Rome on the 10th of July, 1882. T. F. R. Thomas M\ Cardinal Martinelli, Prefect. In place of the Seal. Fr. Hieronymus Pius Saccheri, of the Order of Preachers, Secretary of the Sacred Congregation of the Secret Archives.

FROM THE 8TH SESSION OF THE CONGREGATION OF RITES OF FRANCE: The Most Holy Lord Our Pope Leo XIII, at the suggestion of the Secretary of the Congregation of Rites, having graciously considered the almost unanimous supplications of the Most Reverend Archbishops and Bishops of the Gallican Province, who desired that the Feasts of Saint Mary Magdalene the Penitent and Saint Martha the Virgin be elevated to a higher rank of honor, deigned to grant that in all the Dioceses of Gaul, these same Feasts may henceforth be celebrated with a more solemn observance, observing the prescribed rubrics, notwithstanding any contrary regulations. Given on the 22nd of December, 1881.

OF THE GALLICAN PROVINCE: Several Archbishops and Bishops of

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Gaul presented petitions to the Most Holy Lord Our Pope Leo XIII, requesting that the Feasts of the holy Bishops Lazarus, Maximinus, and Trophymus be permitted to be inscribed in the Calendar of all the Churches of that region. His Holiness, having considered the report of the Secretary of the Congregation of Rites, deigned to grant these petitions; that in the Dioceses of the aforementioned holy prelates, the Feast of the aforementioned saints may be celebrated with a lesser solemn observance, etc., with the Office and Mass, which have not yet been approved by the Holy See in any of the Churches of the Gallican Province; provided that all rubrics are observed. Notwithstanding any contrary regulations. Given on the 22nd of December, 1881.

[*Latin ed. p. 41*]

41 APPENDIX I. The Offices and Masses of the Most Blessed Confessors Benedict Joseph Labre and John Baptist de Rossi. ON THE SIXTEENTH OF APRIL, IN THE FEAST OF SAINT BENEDICT JOSEPH LABRE. G. DUPLEX. All things from the Common Office of Confessors, except those following. Prayer. O Lord, who made your servant, Saint Benedict Joseph, the Confessor, to adhere to you through the study of humility and the love of poverty: grant us, through his merits, to despise all earthly things and to always seek heavenly things. Through the Lord. In the First Nocturn, Lessons from Scripture appropriate to the day. In the First Nocturn, Lesson IV. In the town of Amèttes, in the diocese of Bologna, in France, Benedict Joseph Labre was born of honest and most pious parents. Forewarned by divine grace, a grave and foreign infirmity appeared to him in his youth, and he shone as a perfect example to his brothers in piety, obedience, and diligence in learning Christian doctrine and the rudiments of letters. At the age of twelve, he went to live with his paternal uncle, a priest and pastor of the parish, where he progressed equally in learning and virtue. Burning with charity for his neighbors, he did not allow any needy person to depart without help, and he joined his uncle in ministering to the sick, during a terrible plague that ravaged the area, of which he himself became a victim. He spared no labor, nor was he deterred by danger, but performed the most humble services to alleviate the suffering of those afflicted by the disease, and also filled the place of pastors who had been abandoned by those they served, gathering grass in the fields to feed the sheep; therefore, he deserved to receive the name of an angel. Nor did he act otherwise with his uncle, where he gave a truly splendid example of charity and gentleness, enduring for a long time with remarkable patience and kindness the singular and troublesome behavior of one of his companions, who was often ill-tempered and spoke badly. K). Honest.

[*Latin ed. p. 42*]

42 APPENDIX. Having long felt himself called to the most austere form

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of life, he had accustomed himself to spending days with rigorous fasting or with only dry bread, to granting brief rest to his weary members upon straw mats, to whipping himself with a scourge, and to spending many hours kneeling before the most august Sacrament of the Eucharist in prayer. Having learned that he was to be called by God to establish some kind of monastic institution, he first went to the Trappists, then to the Carthusians, and finally to the Cistercians. But, because of his frail constitution and contracted illnesses, he was forced to leave each of these; thus, it was God's will that this blessed young man, a spectacle of the sufferings of Christ's cross amidst the people, should be visible to both angels and men. For, having implored divine light with fervent prayer, he understood through a most clear inner voice that he was to follow the arduous footsteps of Saint Alexis and to lead a most difficult life in sacred pilgrimages. Therefore, guided by the director of his conscience, at the age of twenty-two, he undertook long journeys; his feet, covered with worn and rough clothing, bound with rope and poorly shod, without money, and lacking all things, sustained only by the alms offered, and carrying a sack laden with stones – by which he repaid his journeying labors – he traveled. In this manner, he traversed many regions of Europe repeatedly, visiting holy places everywhere, never changing his clothes, enduring heat, cold, and rain, often sleeping outdoors at night, avoiding smooth roads and varied diversions, and so that he might more freely turn his mind to God. He left behind an example of wondrous virtue, which confirmed his reputation for holiness with hardly any miracles. Seven years before his death, he returned to Rome, and there he remained, although he did not fail to visit the church of the Blessed Virgin at Lauretano, and other nearby sanctuaries each year. He lived in the city as a pilgrim. He was almost always lacking clothing; he used the same garment perpetually, and he sustained himself with herbs and grasses found along the way, or offered to him, or taken from the dung heap; he quenched his thirst with water, or sometimes with vinegar. Often, he prayed all night in the Flavian Amphitheater, consecrated by the blood of so many martyrs. He usually spent the greater part of the day in the temples, either before the image of the Mother of God, or before the most holy Eucharist, publicly exposed for adoration, and there, motionless, burning, with a shining face, and with his eyes fixed upon the sacred Host.

[*Latin ed. p. 43*]

From this, he derived joy in contemplation, so that whatever derision or insults the common people inflicted upon him, he bore them with gladness and constancy. In the year one thousand seven hundred and eighty-three, on the sixteenth day of April, after having devoted many hours in the church of Santa Maria, he was seized by a malady and, being conveyed to the house of a neighbor, he surrendered his soul to God in the thirty-

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fifth year of his age. This man, renowned for his virtues and miracles, was blessed by Pope Pius Ninth the Great, and was enrolled among the saints with brilliant signs by Leo XIII.

This man loved to read, and in the Nocturnal Lessons of the Holy Gospel according to Matthew, Lesson VII, in that chapter, 16, he read: "Jesus said to his disciples: If any man will come after me, let him deny himself, and take up his cross, and follow me." And the rest. Homily of St. Gregory the Pope. Homily 32 on the Enarratio. "Our Lord and Redeemer, your new man, came into the world, and gave new commandments to the world. For the life of our souls, nourished in old vices, is opposed to the novelty of his grace. For what did the old, carnal man know, except to keep his own; to seize what belonged to others, if he could; to lust, if he could? But the heavenly physician applies healing remedies to each and every vice. Just as in medicine, warm things cure the cold, and cold things cure the warm: so our Lord opposed contrary remedies to sin, such as continence to the lascivious, generosity to the grasping, meekness to the irascible, and humility to the proud."

This is the Lesson VIII: "When he proposed new commandments to those who followed him, he said: Unless a man renounce all things, he cannot be my disciple." And if he says openly: "He who desires what others possess in the old life, through the study of new conversation and your generosity." What is said in this lesson, let us hear: "He who will come after me, let him deny himself." There it is said that we must deny our things; here it is said that we must deny ourselves. And perhaps it is not laborious for a man to relinquish what he has; but it is very laborious to relinquish himself. For it is less to deny what one has; but it is very much to deny what one is.

[*Latin ed. p. 44*]

APPENDIX. Reading IX. On merits, contempt, and how we ought to inquire after those who come to us. The Lord commanded that we renounce our own will, because earthly things are a hindrance to heavenly things, and to the love of God, etc. Whoever comes to the struggle of faith, encounters a struggle with evil spirits.

Reading from the Epistle of the Blessed Apostle Paul to Timothy. 1 Timothy 6.

1. We ought not to struggle about vain things. For if a man struggles about earthly things, he is surely vain in his understanding, and he has a limited sufficiency. But if we have food and raiment, let us be content with these things. For the Gentiles already have these things, and if they will not, they shall be taken away from them. But if we are rich in good works, faith, charity, and patience, these are the things that accompany salvation.

2. Let us not desire to be rich, nor to be puffed up with pride, but let

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us be content with the things that we have. For he who desires to be rich falls into temptation and a snare, and into many foolish and hurtful desires which drown men in destruction and perdition. For the love of money is the root of all evils, from which some, by being eager for it, have wandered away from the faith and have pierced themselves with many sorrows.

3. But you, O man of God, flee these things; pursue righteousness, godliness, faith, charity, patience, and humility. These are the things that accompany salvation.

4. We give thanks to God.

MASS.

Introit. Jeremiah 12. Psalm 85 and 26.

"I have forsaken my house, I have given up my inheritance; I am poor and needy. But the Lord has taken me up." Alleluia, alleluia. Psalm 41. "As the hart desires the fountains of water, so does my soul desire Thee, O God." Alleluia.

Gloria Patri, etc.

Collect.

"O Lord, grant us, through the merits of the holy Confessor Benedict, who devoted himself to the study of humility, to despise earthly things, and to love heavenly things; that we may be able to persevere in good works, and to adhere to Thy love until the end; through Jesus Christ our Lord."

Alleluia.

Psalm 112. "Who is like the Lord our God, who dwells on high, and yet looks down on the lowly in heaven and on earth?" Alleluia.

"As the hart desires the fountains of water, so does my soul desire Thee, O God." Alleluia.

"He raises up the poor from the dust, and lifts up the needy from the dunghill; that He may set him with princes, even with the princes of His people." Alleluia.

[*Latin ed. p. 45*]

"Appen. Extra Ps. Me venire, abneget semeptipsum, tempus paschale." (Graduale 39). "Beatus vir, 45 ix i. et tollat crucem suam et sequat ut me." (Douay-Rheims). "Cuius est Qui enim voluerit nomen Domini spes eius, et non eam respexit insaniam suam propter me." (Ibid.). "Ego autem mendicus si mundum universum nias in vanitates, et f. Qui autem perdiderit eam, falsas animas suam salvam facere, perdet animam et pauper: Dominus sollici- animae." "Tus patiatur?" "Aut quam dabit homo pro animae?" "Dominus est mei. Protector Adiutor meus meus et tu es. Alleluja, f. quoniam que secundum opera ejus. Advena ego sum Septuagesimum, Alleluja et versu Offertorium omis." "Hebr. 13. sequenti, licitur: manentem i. Jo. 2. Nolite diligere mundum, quis diligit mundo

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ctum labiorum mini eius, quod est superbia f. Offeramus ergo oculorum, et Et mundus confitentium no- Secreta vitae. Ibid. hic futu- in mundo, concupiscentia carnis est, concupiscentia sed Alleluja. non est caritas Patris in eo. Ibid. Omne habemus hostiam laudis semper Deo, fru- dum, neque ea, quae Si Non civitatem, ram inquirimus. Tractus >-.'t venturus gelis suis: et tunc reddet unicui- Post f. anima sua? Domine, et deprecationem apud te, et peregrinus. Alleluja. sis pro hominis est in gloria Patris sui cum A n- meam: auribus percipe lacrymas ;neas: enim detrimentum Exaudi orationem Ps. 38. meam, suae commutationem Filius •alleluja. vero lucretur, transit, O blata munera, ciernentissime Deus, propitius respice, et sancti Benedicti Josephi Confessoris tui interveniente suffragio, in «•iconcupiscentiaeius ; quia autem salutem nobis provenire concede. facit voluntatem Dei Per manet in Dominum. aeternum. Communio Qji SequentiasanctiEvangelii secundum ih. 16. Matthaeum. Mat- Matth. ritu: 5. Beati pauperes spi- quoniam ipsorum est re- gnum coelorum. Beatimundo cor- •T?» illotempore : Dixit Jesus di- scipulis suis: Alleluja. Si quis vult post quoniam ipsi Deum videbunt ."

[*Latin ed. p. 46*]

APPENDIX

Post Communion.

Having been refreshed with heavenly gifts, we beseech Thee, O Lord: may we imitate the virtues of the blessed Confessor, Saint Benedict Joseph, that we may be aided by his merits. Through our Lord Jesus Christ.

On the twenty-third of May, in the Feast of the Body of Christ, the Most Reverend Saint John Baptist de Rossi, Confessor, having attained a grave illness, was somewhat relieved from his usual rigor of studies; he was compelled to cease that which he had been doing, lest, inflamed by knowledge, he should seek that which is above all things, namely, to be joined to the Clerical Militia of Jesus Christ.

Besides the sacred studies which Thomas devoted to the disciplines in the College of the Saint, and in which he progressed in virtue, he then, with the delight of his soul, was increased in the priesthood, to preach the Gospel to the poor, with charity, patience, and fortitude; thus, he established for himself an inheritance, so that, unless he were led by obedience, he would have been bound by a special vow to accept this ecclesiastical benefice.

He did a small thing honorably.

IN THE SECOND NIGHT.

Reading.

Reading io.

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Being drawn by the Spirit of the Lord, John Baptist de Rossi, having been made a priest, from Liguria, of honest birth, even as a boy, devoted himself to the sweetness of morals. He was admired by all men, sacred virgins, and citizens, for his universal sweetness, his love of the word, and his ministry to the imprisoned. Born on the thirteenth day of the month, he was seen by the counsel of God to be sent forth to fulfill the office of an Apostle, to the love of virtue.

[*Latin ed. p. 47*]

APPEI was ablaze. Every day, many hours were spent hearing confessions. Having been appointed to the College of Canons of the Basilica of the Holy Mary in Cosmedin, obedient to the See, he devoted himself to prayer, either in the Basilica itself or in the vales, especially to the sick, whom he visited, affirming them as his own. He promoted the beauty of the House of God, and, eager to do so, expended his resources in countless works of charity, providing for the poor at the Deipara Gratia Hospice. He was devoted to others, fostering their love, and poured out his own, also helping the Church in every way. For this reason, in the fifteenth year of his age, he was joined to the College of Priests, who were devoted to preaching and spreading the Gospel, and he took care to increase the number of students there. He spoke of the reason for his apostolate, and he established and increased the Society. Moved by compassion for the needs of the poor, he contributed a modest sum to help them. He left behind a lasting fruit of his tireless zeal: the establishment of catechisms for the celebration of Holy Pascha, a certain stipend for the poor, the homeless, the wandering, and the women who wandered about the city at night, and, above all, a desire to benefit souls, which was evident in all his actions. He was so pious that, in all things, he gave to God, and he could not speak of his goodness without shedding tears. In Deum, his ardor shone forth as he worked in sacred matters, and the Supreme Pontiff Pius Ninth, on the third of the Ides of May in the year one thousand eight hundred and sixty-four, increased the honors of the Blessed in Heaven, and Pope Leo XIII, on the sixth of the Ides of December in the year one thousand nine hundred and [illegible], [illegible].

[*Latin ed. p. 48*]

APPENDIX II. 81st Secret (R). This man. O, in the third nocturne, let him ascend: and, let the holy John the Baptist, your confessor, be reckoned among the saints in the book of saints. We have heard, O Lord, in the Gospel, that the umbilical cord was cut from the same womb. Mass. The just shall not perish, neither in body nor in mind. Through the Lord. After Communion. Mass of the Confessor of the Holy Pontiff. ORATION. O Lord, grant that, through the merits of your faithful servant, the confessor John the Baptist, you may strengthen and protect your faithful; and may he con-

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stantly strive to perform good works. Through your confessor, you adorned him with charity and patience in evangelizing the poor: we beseech you, may he live and reign with your Son, our Lord Jesus Christ, in unity with the Holy Spirit, God, for all ages of ages. Amen. DECREE of Marianopolitana, concerning the Beatification and Canonization of the Venerable Servant of God, Margaret Bourgeoys, foundress of our Congregation of the Sisters of the Lord. Whereas, the Most Eminent and Reverend Lord Cardinal Aloysius Oreglia, from the Holy See, in the cause of Beatification and Canonization of the Venerable Servant of God, Margaret Bourgeoys, at the request of the Reverend Father Arthur Julius Captier, General Procurator of the Seminary of Saint Sulpice, appointed as Postulator of the aforementioned cause, proposed the following question in the Ordinary Congregation of Sacred Rites held today at the Vatican: Whether the judgment of the delegated judge from the Most Reverend Bishop of Marianopolitana, concerning the cult of the aforementioned Venerable Servant of God, or concerning the publication of the Decrees of Pope Urban VIII, should be confirmed in this case and for the purpose of the matter in question. And after the Sacred Rites Fathers, having carefully considered all things, and having heard the voice and the written statement of Reverend Father Doctor Laurentius Salvati, S.J., they decided to respond: Affirmative, that is, the judgment should be confirmed. On February 4, 1882. Concerning the foregoing, a faithful report was made to His Holiness by the undersigned Secretary, Leo PP. XII, and His Holiness, having considered it, was pleased to ratify and confirm the Rescript of the Sacred Congregation on the 9th day of the same month and year. Signed, with the seal, D. CARDINAL BARTOLINIUS, Prefect of the Sacred Congregation. Placidus Ralli, Secretary.

[*Latin ed. p. 49*]

49. A brief document whereby a single and identical formula for absolution, both general and for those at the point of death, and for the Papal blessing, is established, to be used by the Franciscan Tertiaries, as well as other families of the same Order, and also by other Regular Orders and Tertiaries belonging to them. POPE LEO XIII. FOR THE SAKE OF REMEMBERING THESE THINGS IN THE FUTURE. In order that all the faithful, of both sexes, may be able to use these same laws and rites in fulfilling the functions of their institute within the Third Order of St. Francis, it has been deemed necessary to publish a single handbook or manual by means of the printing press. Many controversies have arisen concerning the formulas for general absolution, absolution at the point of death, and the Papal blessing, which are included in this manual. To resolve these controversies, the Council of Venerable Brothers of the Sacred Roman Ecclesiastical Congregation for Indulgences and Sacred Relics has not proposed any doubts or questions, but has carefully considered all matters and has sent its deliberations to Us for consideration. We, for whom the salutary and fruitful association of the

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Third Order of St. Francis has always been a source of joy, and for whom it is supremely important that it observe the sacred laws and rites of its institute, and that it be propagated and grow, especially in these times, have approved the deliberation of the aforementioned Council, and have decided that it should be made known to all through the Sacred Congregation of Venerable Brothers of Our Holy Roman Church. The aforementioned Congregation, in order to better fulfill its duty, first considered all the formulas for absolution and blessing that could be used by the Franciscans, as well as by other families of the same Order, and indeed by other Regular Orders and Tertiaries belonging to them, and then prepared a single and identical formula that should be used by all in the future for these blessings and absolutions. Therefore, the aforementioned Congregation has deemed it necessary to inform all that, if they should find anything worthy of note in this matter, they should...

[*Latin ed. p. 50*]

For a brief and suitable time, the aforementioned Congregation would be subject to this. After a full three years, if nothing is presented by any of the aforementioned orders, the Congregation of Sacred Rites, after carefully inspecting all matters and expenses, decreed the following:

I. For Absolution, in articulo mortis, the formula prescribed in the Constitution *Pia Mater* of Pope Benedict XIV should be retained in all cases, adding only to the Confiteor the words "in nomine Sancti proprii Fundatoris."

II. The Benediction of the Supreme Pontiff, approved in the Constitution of the same *Exemplis tione Praedecessorum*, should be given only twice in the year, and under the condition that this Benediction is never given on the same day and in the same place where the Bishop administers it.

III. In the General Absolution for members of any Order, and in the Benediction with a plenary Indulgence for Secular Tertiaries, the following two formulas, proposed by the Reverend Assessor of the aforementioned Sacred Congregation and approved by the same, should be used entirely, abolishing and suppressing all other formulas previously used:

Formula for the General Absolution of an Order for those enjoying this privilege:

"Ne reminiscaris, Domine, delicta nostra, cuiuscumque vel parentum nostrorum; neque vindictam sumas de peccatis nostris. Kyrie, eleison. Christe, Kyrie, eleison. Christe, eleison. Pater noster. Et ne nos inducas in tentationem. Sed libera nos a malo. Ostende nobis, Domine, misericordiam tuam. Domine exaudi orationem meam. Et clamor meus ad te veniat. Dominus vobiscum. Et cum spiritu tuo."

Let us pray:

"O God, to whom it is proper always to have mercy and to spare, receive

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our prayer; that you may mercifully absolve us and all your servants who are bound by the chain of sins, through the clemency of your piety."

[*Latin ed. p. 51*]

BREVE 51: Hear us, we beseech Thee, O Lord, and have mercy on the prayers of Thy suppliants, and forgive the sins of those who confess to Thee, that Thou mayest likewise grant us Thy benign indulgence and peace. Show us, O Lord, Thy ineffable mercy with clemency, that both we and all our sins may be cleansed, and that we may be delivered from the punishments which we deserve for them. O God, who appeasest the offense of the guilty through penance, look favorably upon the supplications of Thy people; and turn away the scourges of Thy wrath, which we have deserved for our sins. Through Christ our Lord. Amen.

After the prayers have been completed, and with the addition of the prayers proper to the Founder, the priest then says: "Confiteor." "Have mercy on us, etc." "May you receive absolution, etc."

Then he adds: "May our Lord Jesus Christ, through the merits of His most holy Passion, absolve you and infuse His grace upon you. And I, by the authority of the same, and of the Blessed Apostles Peter and Paul, and of our Holy Order, grant you absolution from all bonds of excommunication, major or minor, suspension, and interdict, if you have incurred any such, and I restore you to the communion and participation of the faithful, as well as to the sacred sacraments of the Church. Furthermore, by the same authority, I absolve you from all penances, rules, constitutions, ordinances, and admonitions of our superiors, from all sins, whether committed against God, against your neighbor, through human weakness, ignorance, or malice, of which you have confessed; in the name of the Father, and the Son, and the Holy Spirit. Amen."

The formula for Seculars and the blessing, along with all the other graces of the Order, are given to Tertiaries, with the privileges pertaining to whatever Rule they may have.

Antiphon: "Let my prayer enter before Thee, O Lord; and let Thy ear be attentive to my supplications; Spare us, O Lord, spare us, for Thou hast redeemed us with Thy precious blood."

Kyrie eleison.

Christe eleison.

Kyrie eleison.

"Lest Thou be angry with Thy people forever."

[*Latin ed. p. 52*]

§2 The Brevity: Our Father. And lead us not into temptation. *Responsorium*. But deliver us from evil. *Responsorium*. Save thy servants. *Responsorium*. O God, in whom we hope. *Responsorium*. Send them help

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from the Holy One. *Responsorium*. And from Sion thy mercy. *Responsorium*. Be thou their tower of strength. *Responsorium*. Let the enemy have no power over us. *Responsorium*. And let the son of iniquity not hurt us. O Lord, hear my prayer. *Responsorium*. And let my supplication come to thee. *Responsorium*. The Lord. *Responsorium*. And with thy spirit. With you. Let us pray. O God, to whom it is proper always to have mercy and to spare: receive our supplication; that thou mayest mercifully absolve us, and all thy servants, whom the chain of sin binds. Hear us, and we beseech thee, O Lord, spare the sins: grant indulgence to the supplications, and to the confessing, that thou mayest grant us peace, benignly. Show us, O Lord, thy unspeakable mercy, mercifully: that thou mayest deliver us together from all sins, and from the punishments which we deserve for them. God, who placates the penitent for their fault: look favorably upon the prayers of thy people who supplicate; and turn away the chastisement of thy wrath, which we deserve for our sins. Through Christ our Lord. Amen. Then, the following is said: "I confess," etc. The priest: "May mercy," etc. The Indulgence: Our Lord Jesus Christ, who gave to the Blessed Apostle Peter the power to bind and to loose sins, of all ages, may He absolve you from every bond, that you may have eternal life, and live in the ages. Amen. Through the most holy Passion and Death of our Lord Jesus Christ, through the prayers and merits of the most Blessed Virgin, of the Blessed Apostles Peter and Paul, Mary, of the Blessed Father [N.], and [others].

[*Latin ed. p. 53*]

BRIEF 53, dated All Saints' Day, by authority granted to me by the Supreme Pontiffs, grants a plenary indulgence for all sins. If one says: "In the name of the Father," this indulgence is immediately granted, all other things being omitted, until the end of time, in the name of the Father, and of the Son, and of the Holy Spirit. Amen. After sacramental absolution, the priest should immediately begin with the words "by Christ alone, etc.," and proceed in this manner individually. We fully approve of the decree of this aforementioned Congregation, and by our Apostolic authority, we confirm, ratify, and sanction these letters, and we command that they be observed by all and in all, now and in the future. We declare that these letters of ours shall always exist, be valid, and be effective, and shall produce their full and complete effect; and therefore, any judgments or decisions rendered in the aforementioned matters by any ordinary or delegated judges, including Auditors of the Apostolic Palace, shall be considered valid and binding, and any actions taken to the contrary shall be null and void. Notwithstanding this, to the extent that it is necessary, our regulations and those of the Apostolic Chancery shall not be overridden, nor shall any other Constitutions, Apostolic Ordinances, or statutes, customs, privileges, indulgences, or Apostolic letters, even if confirmed by an Apostolic oath, or strengthened by any other means, be

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considered to be in contradiction with the foregoing, but rather they shall remain in full force and effect, and for the purpose of this instance only, we derogate from them, reserving all other rights, whatever they may be, even those deserving of special and individual mention, to the contrary. Given in Rome, at St. Peter's, under the Fisherman's Ring, on the 7th of July, 1842, in the fifth year of our pontificate. TH. CARD. MERTEL.

[*Latin ed. p. 54*]

54. A BRIEF document, wherein certain offices of the saints are inserted into the universal calendar and the calendar of the Roman clergy, and also it is ordered how the general rubric of the Roman Breviary, title 1, concerning the translation of feasts, should be changed, so that in both calendars there may be free places for the introduction of new offices. LEO XIII, POPE. FOR PERPETUAL REMEMBRANCE. Never have the Roman Pontiffs, our predecessors, neglected the holy men who, through doctrine, virtue, and the excellence of their deeds, illuminated the Catholic Church while they lived on earth, by keeping their memory in the minds of the faithful, especially those whose duty it is to repeat the divine praises in the Breviary. And this, among other things, is done by placing their feasts, whether they are in the universal calendar or in particular churches, and by inserting the history of their lives and deeds, so that those who are bound to recite the divine office may annually repeat the memory of their excellent virtues and deeds with praise. Hence, even in our own times, our predecessor, Pope Pius IX, receiving the prayers and petitions of many holy priests who had come to Rome for the purpose of the Vatican Ecumenical Council, in the year 1874, established the Congregation of Sacred Rites, to which he entrusted the task of determining whether it would be opportune to insert the offices of certain saints into the calendar of the Church, namely those who, having surpassed others in the work of the Apostles, diligently labored for the edification and preservation of the entire Church, and for the wider spread of the Gospel among diverse peoples. The offices of the saints Boniface, Bishop, and Maija, Justin the Philosopher and Martyr, Cyril and Methodius, the Popes and Confessors, Cyril, Bishop of Alexandria, Cyril, Bishop of Jerusalem, and Augustine of Canterbury, were instituted. And now, this particular Congregation of Sacred Rites, having carefully considered all that pertained to the matter, has determined to extend the office of Saint Boniface to the entire Church, and it is to be observed as follows:

[*Latin ed. p. 55*]

DECREE 55: Concerning those who petition for the Office of Saint Justin to be sung, it was decided that it should differ in some respects from the other Offices. This judgment was held and confirmed. These acts are those of Our Predecessor. Furthermore, in the year 1837, We considered it fitting

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to grant the same honor to the Holy Brothers Cyril and Methodius, Apostles of the Slavic people, as We had previously granted to Saint Boniface, as We have said. Moreover, when the Sacred Ministers and the faithful requested that Saint Justin, and other illustrious saints, be honored with proper Offices, among whom was Saint Josaphat, Bishop of Polotsk, a martyr and light of the Polish and Ruthenian peoples, and when it seemed fitting to grant the requests made to the Roman clergy by the Apostolic See, concerning the inclusion in the Calendar of the City of certain saints who illuminated the City itself with their examples and attained the end of their labors there, enriching it with their own virtues; therefore, We deemed it necessary to establish a special Congregation, as Our Predecessor had already done, and We commanded that the Sacred Congregation for Rituals should again diligently attend to this matter, so that the aforementioned Offices, and others if necessary, could be included in the Calendar, whether of the Universal Church or of the Roman Clergy. Therefore, approving and confirming the decrees of the Venerable Brothers, Cardinals of the Holy Roman Church, and others who comprise this Congregation, which were reported to Us by Our Venerable Brother Dominic, Cardinal of the Holy Roman Church, Prefect of the Sacred Congregation for Rituals, We, by Our Apostolic authority, wish and command that the following Offices be inscribed in the Universal Calendar under the lesser form: on February 9th, the Office of Saint Cyril of Alexandria, Confessor; on March 17th, the Office of Saint Cyril of Jerusalem; on April 14th, the Office of Saint Justin the Philosopher, Bishop and Confessor; on May 27th, the Office of Saint Augustine of Canterbury, Bishop and Confessor; on November 14th, the Office of Saint Josaphat of Polotsk, Martyr; and that in the Calendar of the Roman Clergy, the following Offices be inscribed under the lesser form: on April 16th, the Office of Saint Benedict; on May 23rd, the Office of Saint Joseph of Calasanz; on June 10th, the Office of Saint John the Baptist de Rossi, Confessor; on August 19th, the Office of Blessed Urban II, Pope and Confessor; on October 11th, the Office of Saint John Leonard; on December 17th, the Office of Saint Leonard of Port Maurice, Confessor; and that the feasts of Saint Cyril of Alexandria, on February 20th; of Saint Cyril of Jerusalem, on March 20th; of Saint Augustine of Canterbury, on June 8th; and of Saint Josaphat of Polotsk, on December 14th, be affixed in the same Calendar.

[*Latin ed. p. 56*]

56. A DECREE is to be included in both the Universal Calendar and the Calendar of the Roman Clergy, concerning the establishment of new offices, and with the same authority, We wish and command that the General Rubric of the Roman Breviary, title X, concerning the Translation of Feasts, be altered in this manner: namely, that "Duplex and Minor Feasts (with the exception of those of the Doctors of the Church), and Semiduplex

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Feasts, if they are in any way hindered by the occurrence of the Lord's Day or a Major Feast or Office, are not transferred, but are observed on the very day they fall; and on these days, commemoration is made of them during the Vespers and Lauds, with a historical reading, either one of the two or three, if it can be done on that day; otherwise, such Duplex and Semiduplex Feasts are entirely omitted that year, as is stated in the simple form in rubric, title IX, number X, title X, number VIII." Finally, We order that these present Apostolic Letters be appended at the end of the Rubric in new editions of the Breviary, until a careful correction of the Rubric itself is completed by the Congregation for Sacred Rites. We decree and command this, notwithstanding any Apostolic Constitutions and decrees, general or special, issued in universal, provincial, and synodal councils, and all other contrary things whatsoever. We wish that the same faith be given to copies or transcripts of these Letters, even if printed, which are signed by the hand of a public Notary and sealed with the seal of a person of ecclesiastical dignity, as would be given to the present Letters if they were exhibited or shown. Given at Rome, near Saint Peter, under the Fisherman's Ring, on the 28th day of July, 1832. In the fifth year of Our Pontificate. CARD. MERTEL.

[*Latin ed. p. 57*]

87 EX 5. CONGREGATIIONES CONCILII OPTIONIS (1) Die 10 Septembris 1881. Compendium facti. Vacavit officium die 25 Octobris 1880. Praepositura, una ex dignitatibus Capituli Ecclesiae Cathedralis M., et Episcopus die 6 mensis Novembris sequenti, suum Vicarium generalem in novum Praepositum elexit, et eidem canonicam institutionem dedit. Verum, Canonicus Ioannes, qui una cum Capitulo hac de re ab Episcopo certiatus fuerat, ratus canonicatus et dignitates dictae Ecclesiae (excepta prima, quae Apostolicae Sedi reservata est) optionis iuri obnoxias esse, sibique huiusmodi ius pro illa vice competere, die 14 eiusdem Novembris, formiter declaravit, se vacantem Praeposituram optare. Habita hac declaratione Canonici Ioannis, Rmus Episcopus, supplici dato libello, S. C. C. recursum exhibuit, praedicta exponens, et expetivit ut praesens controversia a S. C. G. definiretur.

Defensio Episcopi. Ab initio, defensor Rmi Episcopi ostendit quod privilegium optionis, et Ecclesiae disciplina, et doctores omnes, non modo odiosum praedicant, sed etiam iuri communi contrarium, quia beneficia per institutionem, non per optionem, conferenda sunt, cap. 3 de Insta, et quia in iure definitum est, neminem propria auctoritate beneficium.

(1) Recolle Volumina T, p. 661, V, 589, VIII, 350, XIII, 16.

[*Latin ed. p. 58*]

58. Quod optio potest esse valida, sine collatione Episcopi vel Pontificis, cap. 26 de iure patrio. Scilicet, optio, cum libertatem cleri imminuit et servitutem inducit contra communem rationem conferendi, ita non modo

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a iure communi non inducitur, sed loco privilegii habetur, *Barbosa de canon, ep. 30 §. 2*. *Gagliardi de benef. eccl., ep. 10, pag. 270*. Hinc sequitur, ait, plerumque optiones saltem praeter ius invectas censeri: aliae vero esse, prout in casu, quae omnino contra ius renuntiante, cum non praebendam aliquam titulum canonicali distinctam, afficiunt, sed praebendam canonicatu perpetuo defixam, *Barbosa de canon. et dignit., ep. 30 §. 3*. Agit in casu de optione contra ius ex facto, quod canonicus Ioannes praeposituralem praebendam optavit, quae tituli mutationem necessario inducit, quaeque a Summo Ecclesiae Antistite Pio IX praebendae Garnara perpetuo adnexa atque unita fuit. Iure igitur adversante, nunquam optionis privilegium admittendum concludit, nisi legitimis praesidiis constitutum luculentissime probetur, atque in dubio pro iure communi esse decernendum. Privilegia enim omnia stricte interpretanda sunt, nec unquam praesumi vel sine delectu admitti possunt, *Rota in decis. 165 §. 11 seqq., tom. 16, Recent.*. Disserit autem de iis quae Canonicus Ioannes in medium protulit, ut optionis validitatem ostenderet: de constitutionibus scilicet, ac de consuetudine. Quod ad constitutiones attinet, illas omnino posthabendas affirmavit, quippe quae et nunquam approbatae sunt et contraria consuetudine evanuerunt. Nunquam approbatae sunt, quia Xistus Quartus Pontifex de Apostolica sanctione rogatus, negocium Cardinali Poenitentiario commisit, qui constitutionum schema ne vidit quidem, et mixtum exequutorem delegavit eiusdem Ecclesiae Archidiaconum, ea tamen adiecta conditione « si eos inspectione ipsorum statutorum illa rationabilia et rite facta esse et quod a iuris communis dispositione non deviant, inveneris, super quo tuam conscientiam oneramus... approbo et confirmo ». Haec oppido.

[*Latin ed. p. 59*]

OPTIONIS 59: "The words should be interpreted in such a way that whatever is in conformity with common law is approved; whatever is contrary to it is disapproved. And it must be understood that no legitimate beginning can be ascribed to any option." With these premises, he states that a centennial and unforgettable observance is required, because it is not merely a matter of a privilege, but of a privilege contrary to the law; Passerin, *in sext.* de consuet. ea., 4, no. 80. Furthermore, the options which Canon John presents do not, in fact, reach a period of ninety years. He also distinguishes two periods of time: the first, from the publication of the constitutions up to the year 1602, and the second, from the year 1602 to the present day. Regarding the first period, he states that he was not tainted by options, that there was a place for options at times, but rarely, and thirty years after the publication of the constitutions. But the situation was quite different after the year 1602, because both the Apostolic See disapproved of the right of option, and within the Chapter itself, the opinion prevailed that the privilege could no longer be maintained, as the chapter historian reports. Given these circumstances, two equally serious points

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can easily be demonstrated. First, that Canon John must be judged to be in the wrong, since he cannot rely on either a privilege derived from the constitutions, nor on custom. Second, that for almost three hundred years, custom prevailed against the option, which is of the highest importance, since a shorter period of time would suffice, either for interpreting, or even for establishing a prescription against any solid law. Then, he anticipates and refutes opposing objections, and he puts forward the argument that the right of option is facultative, and that prescription is not admitted in facultative rights. However, it should be noted from the beginning that, when it is a question of privileges introduced contrary to the discipline of the law, from which a violation of another law is derived, prescription is always admitted, even in facultative rights: Bota, *in decis.*, 285, no. 23, par. 9, vol. 1, Rec. And this objection is all the more to be rejected because, whatever can be considered to be acquired by common prescription of thirty years in which no opportunity or occasion for objection was given, is...

[*Latin ed. p. 60*]

60. The opinion should be attributed to the same causes for granting a secular dispensation three times, which is considered to be generated only out of necessity; *Rota decis. 24 num. 11 seqq.* before Ubago; *decis. 85 §. 8par. V to. 1 Recent... decis. 389p. 3 §. 4 Recent*. However, it is said that this was introduced beyond necessity. In the case of optional acts, it is argued that the question cannot be raised, because more than once, over a period of three hundred years, the Chapter has granted it, and they have obtained it. With these premises, it is demonstrated that what was originally optional has become necessary, and therefore, it is concluded that prescription is admitted within these terms. *De Luca de benef. disc. 58%. 7 et disc. 2 %-'4 de regul.* Although he says that he has argued so far as if it were a matter of true and proper prescription, in truth and in fact, it is a matter of interpretation. Indeed, while the capitular constitutions admit of an option, the question is asked whether it was validly established, whether it was challenged by the constitutions themselves. In this ambiguous state of affairs, the Holy See states that the testimonies of the Chapter, the three-hundred-year-old custom, and the acquiescence of the parties, contradict each other. Therefore, the abrogation of the law is clear, or at least the right of option is subject to many exceptions: and therefore, it is more appropriate to argue about interpretative, or rather, presumptive observance, in which long-standing observance, and especially centenaria, even from optional and affirmative acts, confirms the matter; *Rota in Imolen. decimarum 5 Maii 1781 §. 8 coram Litt a; in confirmatoria 15 Iunii coram eodem*. Therefore, the objection of the opponent collapses, namely that the right of option, which is derived from the capitular constitutions, cannot be abrogated by non-use, but requires an express abrogation. Whatever is derived from

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common law or introduces a privilege, must be strictly interpreted and, in case of doubt, rejected. Furthermore, the testimony of the Chapter must be highly considered: for it is asserted not only that the options were rejected, but that they were rejected because the statute was never put into practice, or even because the right of option had ceased to be valid. Therefore, it is...

[*Latin ed. p. 61*]

6f. The matter pertains to law, not to individual cases. The objection that the Vicar General desires it, after the term of option has expired, must also be dismissed. He desired it out of abundance, since he had already obtained the collation and institution to that prebend from the Bishop. He, however, exercised his right according to the law, not according to the law of option, and in such a way that it did not contradict the laws of canon law, the discipline of the Church, or the customs of the place; and because he chose a man who excels in integrity of life, and whose works the Bishop himself uses in performing his pastoral duties.

DEFENSE OF THE CANONICATE OF JOHN. The advocate who defends the right of option states that in that cathedral church there exist twelve canonries with the same privileges, honors, prerogatives, and right of seniority, all recognized by civil law. Seven others are subject to special laws and are liable to suppression. With these premises established, he argues that the petition of Canon John should be granted, because he is the senior, and he desired the vacant prebend, which, according to a clear law of the statutes approved by the Holy See, Chapter 12, "if they wish, they may desire better and more lucrative prebends; and this option is determined to be valid within twenty days after notification of the vacant prebend, and not beyond," and therefore, the collation performed by the Ordinary, favoring the Vicar General, is utterly null and void, and the Vicar General, moreover, incoherently requested the same option after the term had expired.

He begins to treat both matters in separate sections, first stating the names pertaining to the status, and then the criterion of the controversy. And, "above all, the question is raised in the petition (1) by title; therefore, whatever (1) by reason of the matter in controversy" in reality, or with respect to the matter, is divided into the petitioner and the possessor: "The petition is called in which the actor claims to be declared the owner or quasi-owner of the disputed thing, that is, in which there is a dispute about the ownership (e.g., of a house, a church benefice, or a right of choosing or patronage) or quasi-ownership; or about some right to the thing or to the possessor in judicio."

[*Latin ed. p. 62*]

f)2. The right of option, which is introduced outside of the clear and valid law, among abuses, violations, and errors, must be abolished. Only

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the right and privileges belong to the Canons, of whatever constitution, to the extent that they have been granted to them by the will of the founder, and with the consent of the Chapter, confirmed by the Ordinary. See De Luca, *De Canon.*, Disputation 6, n. 13; Gratian, *Disceptatio*, 867, *in totum*. Therefore, no contradiction arises from this, that those who possess the patronage of benefices, especially Ecclesiastics, may choose a better benefice, nor is any prejudice caused to those Patrons, who certainly do not lose the right to nominate. Finally, it is warned that the right of option is admitted promiscuously to a lower grade of dignity, as stated in Moneta, cited, loc. c. 28. After these things, he proposes to demonstrate "that the right of option belongs to each Canon who belongs to the chapter, so that the collation by the Ordinary cannot be maintained in any way. For, as De Luca, *De Iudic.*, Disputation 35, n. 49, testifies, in all Chapters and Colleges, first the statutes by which the members are governed are observed, and then the common law is observed in all controversies; much more, he affirms, it should prevail in the matter where the right of option is granted in conformity with the text of chapter, end, *de Consuet.*, in 6, and chapter 5 and 9, said 74, and it is consonant with justice and equity that those who have borne the burden of labor and long service before others, should also receive the benefit of remuneration before others. And indeed, this is decreed by the statutes approved by the Apostolic Delegate, in Chapter 12, concerning the option of benefices. This disposition is expressed in almost the same words in the cited chapter, at the end, *de Consuetudine*, where the Supreme Pontiff himself commands his executors to present the right of option, until the benefices are chosen at the opportune time. The orator shows that the right of option was entrusted to execution from the year 1511 until the year 1803, citing various "options" – "to acquire, retain, or recover; " that is, the actor only asks, or "that he may acquire peaceful possession, or that he may recover what has been lost." Schmalgr., *in tit. de Iudiciis*, lib. 2, Decret., n. 5. The matter concerns the right of option, a petitionary judgment.

[*Latin ed. p. 63*]

63. In this case, however, the speaker argued that, with a clear explanation of the specific facts, no prejudice had been introduced to the right of option due to its non-use from the year 1804 until the present. His argument was: since the option is granted facultatively, if they wish, this condition also contemplates the power of not choosing, just as free actions consist in doing or not doing. Therefore, since this action is considered facultative, non-use does not prejudice; the Rota decided this in *Dec. 178 Diversor*. For a negative action infers nothing (Cravetta, *Cons. 319, num. 13, v. 19, etc.). Furthermore, the speaker pointed out that, in law, when a subsequent relation in a capitulary does not abolish a prior law, it follows that the established statute remains in force, with a clause that renders it

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invalid, approved by the Supreme Pontiff. For nothing is more natural than for something to be dissolved in the very way in which it was constituted (*Reg. Iur. 36*). This was confirmed by the Sacred Congregation in Prague on June 14, 1862. Moreover, this is all the more true because penalties are established against those who violate the statute that renders it invalid, which invalidates and affects the custom, not only in the past, but also in the future (Barbosa, *Clausul. 40, num. 2 et 35*; Gonzalez, *Gloss. 67, num. 50*). In addition, the author extensively explained the nature of a facultative act, which is not subject to prescription, since it is left to the free will of each individual, and no authority confirms that any prejudice can arise from non-use (Scarfant, *JEluc. Can. ad Dec. IV, Tom. II, num. 11*; Schmalzgrueber, *Ius. Ucci, Tit. XXVI, num. 28*; *de Luca, Rota, etc.*). Specifically, Moneta teaches that the faculty of choosing is not lost through non-use (*Tract, de Optione, quaest. II, num. 18*). However, the speaker continued, it would be a mistaken interpretation to argue the contrary, because once a law regarding the right of option has been in force for three centuries, if the option has not been exercised due to some special circumstance, this does not constitute contrary usage. The speaker further argued that it is futile and inconsistent for the Vicar General to invoke the option, given the changed circumstances; rather, his actions confirm the validity of the right of option. This right of option now pertains to the granting of the Canonry to Father John, with the same honors and privileges of seniority.

[*Latin ed. p. 64*]

64. ON THE MATTER OF OPTION. Although someone might argue that the right of option to be granted by the General Vicar, stemming from a lay patronage and outside of the Mass, is permissible, it is clear that such an option has no validity, because it was issued after a useful period of twenty days. For indeed, the term for redemption is determined by the statutes to be within twenty days, and not beyond, according to the text of chapter fin. of the *Consuetudines* in 6 Gonzalez, ad reg. 8 gloss. 34, Antonelli *de tempore legali* Lib. 4 cap. 28 num. 3, Barbosa *de Canon.* cap. 30. Therefore, having stated the premises for both sides, the following question was to be examined:

Q: Does the right of option to a vacant canonry, in favor of Canon John, exist by law, or rather, is the collation supported by the General Vicar, made by the Ordinary in this case?

RESOLUTION. The Sacred Congregation of the Council, having considered the matter, on the 10th of September, 1881, decided to respond: Affirmative to the first part, negative to the second.

FROM WHICH THE FOLLOWING ARE GATHERED:

I. The right of option is not inherent in common law, but is found in a

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statute, custom, or Apostolic privilege.

II. In this case, this right is derived from custom, as found in chapter IV of the *Consuetudines*, where Boniface VIII says: "Since in your Church, where the custom is that the older Canons, if they wish, can, when a canonry becomes vacant either through themselves or through others, choose the benefice."

III. However, this right must be exercised within twenty days by common law, as Boniface VIII states in the same chapter: "Lest the provisions... be delayed beyond the due time, we decree that those who wish to choose... shall wait for only twenty days..."

IV. Boniface VIII clearly establishes the custom of choosing in this chapter. He commands that this be observed by the executors of the Apostolic letters.

[*Latin ed. p. 65*]

65 IV. The right of option originates from the Constitutions of the Chapters, approved by the Apostolic See; and it remains in force, unless it has been expressly repealed.

V. The right of option is in accordance with justice and equity: for it is fitting that those who have borne the greater burdens of daily labor and service should also enjoy the greater benefits of remuneration.

VI. Some authors maintain that the custom of choosing is not abolished by the fact that it has not been exercised for a long time: for when an option is granted facultatively, if those to whom it is granted wish to exercise it, this condition also contemplates the possibility of not exercising it; just as free actions consist in doing or not doing; therefore, rights granted facultatively are said to be inalienable.

VII. Hence, the Sacred Congregation has declared that the right of option still exists in the Chapter, even though it may seem to have lapsed after a long period of time. Moreover, even after the Supreme Pontiff has provided for someone, having previously exercised the right of option, provision can be made for that person to receive what was promised, if there is a custom to that effect, as the Pope wrote, that what has been promised must be given, unless there is a legitimate impediment.

SPONSALIA. On December 17, 1881, Cosma, intending to marry a certain girl, took care to fulfill all that which, according to the ecclesiastical laws, must precede the celebration of marriage. As Teresia knew, with whom the aforementioned Cosma had had relations for several years, under the age of 4. Volume XV, page CL IX.

[*Latin ed. p. 66*]

On June 7, 1877, the proper parish priest came before him, presenting an impediment to the marriage of Cosma, alleging that, under the hope of

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a future marriage, he had caused the woman to lose her virginity and had made her pregnant. With these reasons, he renewed his appeal to the diocesan curia, accompanied by three witnesses. The curia, after completing the procedural steps, having heard the witnesses under formal examination, and having considered all matters according to custom, on January 23, 1878, issued a judgment unfavorable to the woman. From this judgment of the diocesan curia, a better outcome was hoped for, and an appeal was made to the Archbishop. And not without reason: for the metropolitan curia, having reviewed the judgment of the first instance, considered it to be invalid and without force on October 5 of the following year, and decreed that Cosma should take Teresia as his wife. Then Cosma, not discouraged in spirit, appealed from this decree of the metropolitan curia to the Sacred Congregation. The Archbishop, having been requested in the customary manner, first stated that all doctors require a promise in marriage, so that an impediment to public decency may arise from it; then he continued: "Although a promise is desired in the process, nevertheless, from the womb of the bride and from the witnesses, it is clear that there is no promise of the bridegroom, by virtue of which he is bound to take the bride as his wife; indeed, a promise can stand with the acceptance of the other, who does not make a reciprocal promise. Truly, one party is not considered to obligate itself independently from the other, because each is considered to wish to enter into a contract according to the intention of the other." Thus Scavini. "Furthermore, from the process it is clear that the bridegroom had relations with the bride and defiled her: therefore, the bridegroom is bound to contract marriage with the bride, since she is of honest life and of equal condition, by the *facio ut facias, do ut des* of the contract, because in this case, the damage cannot be adequately repaired in any other way, as is held by Saint Thomas. But if there are canonical causes for which the defiling bridegroom is not bound to contract marriage, he must endow the bride according to her condition."

[*Latin ed. p. 67*]

SPONSALIUM 67. A synopsis concerning the DEFENSE of Teresia. The law, L. 4 ff. de spons., teaches that marriages contracted by simple and naked consent are perfected in some way externally and perceptibly, without the necessity of specific verbal formulas. The Gloss, in cap. tuae fraternitati eoo Spons., and Rota in Maiorica, Sponsalium 25 Aprilis 1747 §, attest to this. Furthermore, concerning the matter at hand, it appears that such mutual consent, or reciprocal expression of will, not only through words but also through actions, which are more powerful than words, was clearly present, both from the testimonies of witnesses and from the letters sent by Cosma to Teresia. Indeed, even granting, though not conceding, that Teresia did not express her consent through words, no one will doubt that she consented through her actions; for the witnesses brought before the

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court testify that Teresia was deflowered by Cosma and became a mother, and Cosma himself does not deny this. Furthermore, the act of carnal copulation provides sufficient evidence of consent to marriage, if the woman is of good reputation, as is stated in Reiffenst., in Ius Canon, ad lib. 4 decretai, de sponsal. et matrim. §. 5, num. 68, with the following reasoning: "because" an honest girl is not considered to give her body to anyone "except her" betrothed, and under the hope of a future marriage, even otherwise honest girls are easily persuaded. Perez de Matrim, disp. 12 tit. de spons. s. Ptota in Romana Sponsalium 26 Ianuarii 1738 coram Nunez_, in Leodien, seu Aquis granen. Sponsalium 3 Februarii 1741 §. Idque coram de lunn. S. Congregatio in Laepontina Sponsal. 7 Maii 1857 §. Hisce, et in Tranen. Sponsalium 29 Ianuarii §. 4 Hinc. Moreover, all the witnesses testify with one voice that Teresia is an honest woman. Therefore, the existence and efficacy of the marriage are safely established, based on the promise made by the man, and the reaffirmation, whether through words or through defloration accompanied by pregnancy, given by the woman, as all the witnesses, and even the parish priest, attest.

[*Latin ed. p. 68*]

68. Regarding the *sponsalia* (betrothal), it must be affirmed that the judgment issued by the metropolitan court should be upheld spontaneously, as if it were self-evident. DEFENSE OF COSMAS. However, the following points should be considered in favor of Cosmas. According to the law, a betrothal cannot be validly contracted unless there is a promise made by one party and a reciprocal promise or acceptance by the other. And this is certainly true, since betrothals are nothing other than a declaration and reciprocal promise of future marriage (I. 1 ff. *de Sponsalibus* and Chapter 31 *de Sponsal. et Matrim.*). Furthermore, according to the law, whenever the existence of betrothals is claimed, which restrict a person's freedom and impose a perpetual obligation upon them, this must be proven not with mere indications and conjectures, but with solid arguments that demonstrate the will of the contracting parties (e.g., Rota decrees 242, page 11, recent; 267, page 18, number 1; and in Pampilonensis, *Sponsalium*, June 28, 1755, § 5, before Borull; and Concinit S. O. C. in Neritonen, *Sponsalium*, April 1, 1866, %..JE contra). Given these legal principles, it has been established that the mutual promise between the man and the woman, which is required by law, was not present in this case, nor can it be proven through the witnesses presented by Teresia; for these witnesses, in their testimonies, prove nothing other than amorous and scandalous relationships, or, at best, are subject to exceptions and therefore do not deserve any credence. Therefore, if nothing can be proven from the witnesses presented by Teresia to demonstrate the existence and validity of the betrothal, since some say nothing about a mutual agreement regarding a future marriage, and others, even if they speak of it, do not

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provide full credibility because they are subject to exceptions, either in their person or in their statements, it follows that the true and formal contract of betrothal cannot be proven in this case. Furthermore, less weight should be given to the letters that Cosmas wrote to Teresia during the time he was devoted to military service; although these letters speak of amorous relationships and of cohabitation, of which Cosmas himself was pleased to remember. However, with regard to the promise of a future marriage...

[*Latin ed. p. 69*]

Regarding the matter of betrothal, 69. No evidence of a betrothal from the man's side, nor of the woman's subsequent acceptance, is found. Furthermore, the argument derived from the alleged defloration, by which Teresa seeks to prove the existence of betrothal, appears to have no validity, since Teresa would need to demonstrate that the defloration, of which Cosma was the author, occurred under the faith of a marriage contract; see *Consilia de Sponsalibus*, note 7, number 72; *Sacra Rota*, decision 374, number 7, before Celso; and *Camer. Sponsalium*, November 22, 1727, number 11, before Calcagnino. Without such demonstration, the defloration indicates lust, not betrothal. Indeed, Cosma has demonstrated that it cannot be argued in any way that the defloration occurred under the faith of a marriage contract, as stated above. To resort to a presumption would be a futile effort, by which we are taught that a virtuous woman does not use the resources of her body unless she is enticed by the hope of a future marriage. For if this presumption were admitted in judgments, easy access would be opened to frauds and calumnies, and an opportunity would be given to young women to deceive anyone who wishes; as the Rota states in *Maioricen. Sponsal.*, March 6, 1752, §, before Amadeo. However, setting this aside, another witness suggests that there is great doubt about Teresa's virtue, which has been so greatly magnified. This witness, under oath, testified that he knew that Teresa had been involved in amorous relationships with two other young men, before Cosma entered military service. Therefore, if it cannot be proven from what has been discussed so far that there was a mutual agreement between Cosma and Teresa regarding future marriage; if such an agreement cannot be presumed from the alleged defloration, because it is not clearly established that Teresa led a virtuous life, it seems that a judgment should be rendered declaring the betrothal null and void, and therefore the sentence of the Archdiocesan Court should be overturned. After these arguments presented on both sides, the matter was referred to the judgment of the Most Reverend and Most Reverend Fathers.

[*Latin ed. p. 70*]

MARRIAGES 70. Whether the judgment of the Archdiocesan Tribunal

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should be confirmed or overturned in this case. RESOLUTION. After due consideration by the Sacred Congregation, on December 17, 1881, it was decided to respond: The judgment should be confirmed and upheld. (1) (l) Noting that, in the case considered, the Sacred Congregation has admitted an exception, we observe that, from what has been proven by witnesses, the judgment of the Archdiocesan Tribunal appears to be valid, and that the girl in this case was of honest life. Although, generally, the marriage of a woman is not considered valid if only one party has offered it; nevertheless, there may be cases in which the use of her body, even without the hope of future union, is not considered to be a valid impediment, provided that this acceptance and promise of marriage are equivalent. The Sacred Congregation has followed this jurisprudence, as can be seen from Volume I, page 75 and 342, Volume II, page 147, Volume III, page 304.

PRIVATION OF PARISH. On December 17, 1881. The layman Benedict, a priest, obtained the parish in the Diocese of S. in the year 1863. However, after only a few months had elapsed since he took possession, first seventy inhabitants, then the local Syndic, then the foreign Vicar, then the Prefect of the province, and finally the Ministry of Worship, appealed to the Archbishop, all speaking with one voice, demanding that Father Benedict be removed from the care of souls. Therefore, by a decree of the Archdiocesan Tribunal of July 30, 1864, he was suspended from his pastoral office, and on August 23 of the following year, he left the parish. At the urging of the local Syndic, a process was instituted before the same Tribunal, and on January 26, 1866, a summary of the facts.

[*Latin ed. p. 71*]

PRIVATIONIS PARISH 71. A judgment was issued, whereby, due to public animosity, abandonment of the parish church, neglect of pastoral care, and other causes concerning the administration of the Sacraments, the celebration of the parish Mass, and good reputation, the aforementioned provisional decree was confirmed, assigning half of the proper stipend to the parish, which nevertheless, for a certain time, the Patron received in its entirety. In the year 1879, with the Episcopal See vacant, the Capitular Vicar, heeding the supplications of Benedict, permitted him to return to the parish, from which, however, a few months later, he was forced to flee at night, due to the anger and indignation of the people. The new Prelate, after six years and more, entrusted the same parish to Benedict, moved by his prayers, which he considered unchanged. But it seems that this was a misfortune, since the parish priest, rather than improving, worsened, and after a few months, he had to leave the parish a third time, to which he has not returned since, although he has left no stone unturned to obtain the consent of the Archbishop. With all his efforts thwarted and rendered futile, the Archbishop brought the case before a lay judge in *indus*, requesting that he condemn the parish priest; however, the judgment did

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not favor the plaintiff. So greatly was the Archbishop moved by the audacity of the parish priest, that he declared him censured, and on March 12, 1881, he appealed to the S. C. O. [Sacra Congregatio Omnium Actionum], sending a letter from the parish priest, injurious to the Episcopal dignity; recounting the actions of the parish priest, and urgently requesting that the S. C. deprive him of the parish. The Holy Congregation replied: Let the Archbishop proceed according to the form of law. However, he reported that a formal process could not be carried out due to the lack of time. He also stated that the parish priest had celebrated Mass, even though it was suspended; and he sent to the Holy Congregation a scandalous pamphlet, published by the printers, and a "contumelious" letter from the parish priest, in which he threatened to appeal to a higher secular tribunal. Then the S. C. C. [Sacra Congregatio Consilii] replied that the Ordinary should complete the process, at least in a summary form. But even so...

[*Latin ed. p. 72*]

72. The parish of Privationis reported to the Ordinary that the Archbishop was not proceeding with the case, nor was he restoring the parish to its rightful pastor. Upon being requested again, the Ordinary sent further documents, and also a lengthy letter in which, after again refuting the pastor's assertions, he declared that he could not proceed with the case, because, having been subjected to insults and affronts, he would be acting as judge in his own cause. Furthermore, the Ordinary reported that he had brought the pastor before the Praetor Oeconomus, in order to compel him to return the fruits of the benefice.

A Synopsis of the Matter. First, it must be considered from the Archbishop's perspective that, although, according to the Tridentine Council, Session 25, Chapter 14, concerning the imposition of penalties, a graduated procedure must be observed, so that before depriving someone of a benefice, those who are to be punished may have the opportunity to repent; yet, according to the same Tridentine Council, Session 21, Chapter 6, concerning the same matter, a different procedure is to be followed against pastors who live shamefully and scandalously. For the Fathers of the Council of Trent decreed that such pastors should be deprived of their office not gradually, but directly, if, after having been warned and corrected, they persist in their wickedness, as Giraldi states in his *Eorumpositio Juris Pontificii*, part 1, book 3. See also the Decree, title 2, on the conduct of clerics, section 332, page 228, and the resolution of the Sacred Congregation in the case of the parish of San Donnino in Burgos, May 4, 1737. From these sources, it appears that no formal procedure is required in imposing a penalty against pastors leading a shameful and scandalous life. Indeed, if the documents pertaining to this case, which are on record, are examined, the depravity of the life of Pastor Benedict, and his incorrigibility, are so manifest that it appears that he should be justly and rightfully deprived of

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his office. And in truth, the Syndicus of the place wrote to the Archbishop, recounting many things by which the pastor, a few months after taking possession of the parish, had aroused so much hatred among the people that...

[*Latin ed. p. 73*]

The parish of Privation had incited all its inhabitants to demand his removal. Seventy inhabitants of the same parish presented a petition to the Archbishop; and the Ministry of Worship informed the Primate that the parish priest, Benedict, had become a sign of general hatred, due to his deplorable conduct, under whatever title, not excluding the crime of sodomy, of which he was accused. The Archbishop also affirmed that the parish priest had been accused of excessive familiarity with women of bad character; and that, in the proceedings against him, he had been declared to be an usurer, a contemptuous person towards the ecclesiastical court, a blasphemer, and a calumniator. He is also easily found to possess these same qualities even at the present time, which led to the arrest of the aforementioned parish priest, and his economist, before a secular tribunal. Moreover, his fury reached such a point that he published a notorious pamphlet, in which, among many other insults, the Archbishop was accused of the sin of simony. Letters written by the parish priest to the Archbishop have also been found, in which he does not hesitate to call the Archbishop a man without conscience, a tyrant, a barbarian, an excommunicate, and one connected by affinity to the sorcerer Simon, a calumniator, and a notorious liar. Finally, it must be noted that the aforementioned parish priest, although suspended, celebrated Mass in several places, and therefore committed an irregularity. Regarding this matter, it seems that his deposition from the office of parish priest should rightly take place, according to the Archbishop's petition.

THINGS FAVORABLE TO THE PARISH PRIEST. On the other hand, it must be considered that, according to the law, if the parish priest is permanently assigned to his position, the deprivation of the benefice is not valid unless it is preceded by three, or at least one, peremptory warning, and by proceedings in accordance with the sacred canons. Cap. Sacro 48 de Sent. Excom. cap. Romana, cap. Statutum eod. tit. in 6°. In the matter of the case of St. Severin, discussed on April 4, 1778, before the Sacred Congregation, the official conclusions in favor of the parish priest Laetti stated under § Addit - ibidem: "For a permanent deprivation or suspension, three things are required: namely, a grave cause, providing sufficient proof, and a proper form observed." For, according to the Council of Trent,

[*Latin ed. p. 74*]

"The parish deprived" does not provide a just cause for any dishonorable conduct; rather, it is the conduct that precedes the deprivation, but

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only after a threefold warning. Therefore, concerning the doubtful matter: "Should the position of the Economic be maintained, or should the Parish Priest be reinstated?" the Congregation responded: "Negatively to the first part, and affirmatively to the second, reserving the right of the fiscal promoter to act against Laetti, according to the form of the Council of Trent, and furthermore." And so, in these substantial matters, the Congregation insists that, when it is a question, as in this case, of the deprivation of a parish due to very serious accusations against the Parish Priest, the process must be carried out at the expense of the Bishop, as demonstrated by the decree of Piacenza concerning the restitution and rehabilitation to the parish of June 14, 1846. Since, in this case, the form prescribed by the Holy Canons has been completely disregarded, therefore, it cannot be maintained that proceedings can be initiated for the deprivation of the parish. Nor do the reasons presented to support the Bishop's petition in fact exist. Indeed, with regard to the aversion of the people, if one disregards the clamor of a few, who are not without exception, others have not even murmured. Furthermore, it is evident from the records that the Parish Priest was forced to leave the parish for the first time due to unjust persecution. From this it follows that the judgment of the Curia, by which the parish was deprived, was not in accordance with the laws of justice. Also, he was forced to flee from the parish a second time, when the persecution by the Economic began to intensify. However, the Archbishop, in order to justify his own conduct, resorted to the citation of the same Prelate and the Economic before a lay Praetor, or even to the publication of a scandalous pamphlet; for all of these things appear to demonstrate in the Parish Priest nothing other than great distress of mind, by which, being led and oppressed, he sought to defend himself in every way. Moreover, if anything that the Parish Priest states is true, then he is certainly not so wicked that he should be deprived of his benefice, for in the letter, printed in type,

[*Latin ed. p. 75*]

PRIVATIONIS PAROECIAE 75 ad Apostolicum agentem data, agitur de quodam schemate compositionis ab Archiepiscopo proposto. Inter odiosas tandem fabellas et calumnias amandanda videntur quae de Parocho opponuntur quoad mores; quandoquidem praeter nudam affirmationem adversariorum, nulla affertur in actis probatio, ideoque vulgatum adagium quod gratis asseritur, gratis negatur, iure optimo in themate aptari posse videtur: cum nemo praesumatur malus nisi iuridice probetur. Res cum ita se habeant, concludendum videtur, locum in themate fieri potius Parochi redintegrationi, quam eiusdem depositioni. Hisce breviter utrinque discussis, E. E. P. P. iudicio suppositum fuit enodandum sequens Dubium: An sit locus privationi paroeciae in casu. RESOLUTIO. Sacra O. C. re discussa sub die 17 Decembris 1881, respondere censuit: Affirmative et amplius; et scribatur Archiepiscopo ad mentem. Ex QUIBUS COLLIGES: I Ex Trid. Sess.

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21 cap. 6 de ref. constitui parochos turpiter et scandalose viventes privari posse animarum cura, non procedendo gradatim, sed recta via, quatenus incorrigibiles permanserint, postquam moniti fuerint. II Ipso iure beneficiis privari clericos, reos infandi criminis sodomiae constare ex Constit. Horrendum s. Pii V; ita ut quoad eosdem tantum opus sit sententia declaratoria. III In infligendis poenis, rationem adhibendae formae graduatoriae in hoc positam esse; nempe ut puniendus resipiscere valeat, antequam remedia extrema adhibeantur. IV In themate rei resipiscentiam extra spem positam fuisse quisquis eruet ex dictis: nam diu et saepe monitus, quotidie in peius ruit; ita ut suspensus pluries sacra litaverit, de sodomiae crimine accusaretur, libellum famosum typis evulgare!, in Praesulem, quem in ius quoque rapuit coram tribunali laico.

[*Latin ed. p. 76*]

76. OF FRUITS AND DISTRIBUTIONS. On December 17, 1881, the Spanish priest, Henry, reported to the Most Reverend Father: that in the year 1869, the civil government had refused to pay the assigned sums, which were due according to the concordat, to the secular clergy; hence, he himself, due to a lack of resources, had been forced to abandon his own cathedral in order to obtain sustenance. However, he continues, that these assigned sums were indeed paid by the government in the year 1879; but that the Chapter and the Bishop had denied him all fruits and revenues for the time of his absence from the diocese, despite having seen a legitimate reason for his departure. When asked about this, the Bishop replied: that not only had the unfortunate situation of the cathedral been caused by an unjust law of the government, but also by the improper custom of some benefactors (to whom the orator should be commended), who, when they come to the church, seem to seek rather to accumulate wealth, than to render to God the service due to Him. Furthermore, the Bishop said, the absence of the orator is entirely detrimental, since he was absent without a just cause and without the permission of his superior; therefore, it cannot be done that I should grant his request, despite his petitions.

SUMMARY OF THE FACTS. The dispute concerns Canon Henry.

THOSE WHO FAVOR CANON HENRY: Those who suffer from infirmity or another reasonable bodily necessity are excused from the law of residence, and are considered as present in the choir for this purpose, so that they may receive either the fruits or the daily distributions. For after Pope Boniface VIII, in chapter *Consuetudines de Clericis*, number 6, generally established that those absent from the choir should not receive distributions, he immediately added: "Except those whom infirmity, or a just and reasonable bodily necessity, or evident benefit to the Church, excuses." This disposition of Boniface was renewed and confirmed by the Council of Trent, in session 24, chapter 12, concerning reforms. But Canon

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Henry...

[*Latin ed. p. 77*]

FRUCTUUM ET DISTRIBUTIONUM 77. Not compelled by his own will, but by necessity, namely by the poverty which afflicted him, he left the place of his residence; therefore, both the fruits and the daily distributions are due to him. There can be no doubt about this, since the civil government of Spain is not fulfilling the endowment assigned to the Cleric in the Concordat; as a result, the ministers of the Church are forced to wander here and there, in order to obtain the means necessary to sustain life. It is also clear that poverty, or the lack of means for honest sustenance, is among the reasonable causes to be considered. Indeed, Pope Boniface, in the aforementioned chapter, states: "It is to exclude from these distributions those who are negligent" or who despise residing there, but not those who are unable [to do so]; and *potentia* is said to exist when the absence is not voluntary, but is caused by "some circumstance, so that he does not reside less than he ought," as is best understood in the decision of the Rota, 808, number 8 and following, before Motines. Furthermore, Canon Henry left the place of his residence, obtaining permission from the general vicar of the Bishop, who was then absent. But even if this is overlooked, it is established by law that, when necessity compels one to leave the place of residence, the permission of the Bishop is not required, as taught by the Rota, cited, decision 808, number 8 and following, before Motines; "Indeed, when there is urgent necessity for not residing, neither is the aforementioned permission necessary for granting the fruits and daily distributions; as affirmed by the Doctors in the aforementioned chapter, concerning Clerics who do not reside, in paragraph 6." However, if, by hypothesis, there was no just cause for leaving the place of residence, whatever may be the case regarding the daily distributions, it seems unjust that the cleric should be deprived of the fruits of his canonry, because the Tridentine form, session 24, chapter 12, concerning benefices, was not observed. This conciliar form must be observed, under penalty of nullity of acts, as taught by Ferraris, *Bibliotheca Canonica*, verb. *Canonicatus*, article 5, number 20. It is consistent with the constant jurisprudence of the Holy See, as can be seen in Catanzaro, November 14, 1671; Ferentino, December 20, 1820; and Mexico, July 12, 1713. However, the method of action of the Chapter seems more worthy of approval.

[*Latin ed. p. 78*]

78. OF FRUITS AND DISTRIBUTIONS in Spain: Because, not only was the gradual deprivation of fruits, which should have been observed according to canon law, not maintained with respect to Canon Henry, but he was neither warned nor summoned, as the laws prescribe, and as the Sacred Congregation of Councils decided in Vercelli. Uh. 1, Beeret, page 190. It

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must also be remembered that all the fruits of the Cathedral mass consist of daily distributions; in this case, according to Trent, two-thirds are intended for the provision, and one-third is assigned for distributions, as the Sacred Congregation of Councils decided in Brixen, regarding the services of the choir, on August 14, 1880; and in Cephalonia, on March 31, 1870. Therefore, it seems that Canon Henry is at least due the fruits of his provision.

WHAT IS OPPOSED TO CANON HENRY. The advocate of the Chapter, however, relying on five arguments, contends that no fruits are due to Canon Henry from his provision. And addressing the first argument, he says: that from the very foundation of the Cathedral, all its revenues have always been derived solely from daily distributions; so that, from this manner of distributing the fruits, a legitimate custom has arisen, which, having been kept in view in the statutes drawn up by the Chapter, seems to have been converted into a statutory law. Furthermore, such statutes, approved by Paul III, prescribe in chapter 2, that all fruits should be converted into distributions, and that those who belong to the Choir should be able to receive them "according to the ancient statutes of this holy Church, in this matter confirmed by the Apostolic Bull" (of Paul III), which declares that all fruits should be converted into daily distributions, so that in order to effect this, the resident must attend the Choir on all days and hours of the year. This foundation and custom corresponds to the wishes of the universal Church and to the decree of the Council of Trent, Session 21, chapter 3, which decrees that at least one-third of the provision must be converted into daily distributions, where there are no distributions. This is clearly demonstrated by Cardinal De Luca in his Annotations to the Council of Trent, discourse 15, number 9. According to the second argument, the advocate draws from the oath taken by Canon Henry to observe and to make observe...

[*Latin ed. p. 79*]

FRUITS AND DISTRIBUTIONS 79: The established regulations determine this; indeed, every law proclaims and teaches that an oath must be scrupulously observed, and Reiffenstuel teaches this in Chapter on Oaths, book 2, page 90: whenever the thing which is sworn is not illicit, nor contrary to good morals, nor impossible. Turning to the third argument, the Orator observes that the Canon, Henry, all the more ought to observe the foundation, the custom, and the regulations, because the Council of Trent does not impede them. This is truly the case in the Council of Trent, Chapter 3, Session 21, on Reform, when it is established that where there are no daily distributions, at least one-third of the benefices should be allocated to distributions, and the following words are added: "with the customs of those churches being preserved, in which those who do not reside, or who do not serve, receive nothing, or less than one-third." Therefore, since in this case the custom and the regulations of this church grant nothing to

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those who are not interested, it is evident that the Canon, who was absent, could not profit from anything. In the fourth and most important argument, the Orator shows that the Canon, Henry, had no just and legitimate reason for being absent, nor did he have the permission of the Ordinary, which, according to Barbosa, on Canons and Dignities, Chapter 24, paragraph 1, are both required together. Furthermore, the Canon, Henry, must be declared to have acted falsely when he declared to the Congregation that he was absent because he had to seek food and clothing elsewhere: for the Government paid all the allowances to that Canon, above others, because he had sworn the civil constitution. Moreover, he received all the emoluments, while those present in the choir received nothing, because they refused to swear with all their strength. Therefore, since he was habitually absent from the choir, the distributions are not due to him, according to Barbosa, on Canons and Dignities, Chapters 22, 24, 35, and 36. Finally, poverty is excluded, because the Canon, Henry, made long and numerous journeys, and built a house for himself with a private oratory. But, if a just reason for being absent had existed, this should have been recognized by the Bishop; but the Canon left without seeking permission from the Bishop, and is therefore deprived of all right to profit from the distributions. Regarding the final argument, which pertains to the defender of the Chapter...

[*Latin ed. p. 80*]

Therefore, it maintains that, in the case under consideration, there was no need for a formal citation to remain [in his position], as is objected, before Canon Henry was condemned for the deprivation [of his income]. Indeed, the formal citation to remain, prescribed by the Council of Trent, is required only when it is a question of the deprivation of the fruits and the benefice; but not, as in the present case, when it is a question of the loss of daily distributions, as Barbosa states in the aforementioned work, chapter 22, paragraph 55. The Defender of the Chapter also cited a Resolution issued by the Sacred Congregation in Oxford on August 14, 1880. In that case, the Canon was absent because he feared for his life, since he had refused to swear the civil constitution; nevertheless, since the statutes required his presence, and since he had departed of his own accord, without the Bishop acknowledging a just cause for his absence, the Sacred Congregation, in response to the question: "Whether the fruits of the prebend and the distributions due to the Priest Joseph Mary de Bulucua in this case are due?" answered: "No, except for the time when there was a reasonable cause for his absence, according to the judgment of the Bishop." From this definition issued by the Sacred Congregation, it asserts that two things have been confirmed: namely, that the Bishop is the judge of a legitimate cause for absence, and that the statutes, which require that all income be paid in daily distributions, are in conformity with natural law, and therefore must be strictly observed. With these premises presented for both sides, the fol-

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lowing question was proposed: Whether the distributions due to Canon Henry in this case are due. (1) RESOLUTION. The Holy Council, having considered the matter, on December 17, 1881, decided to respond: "No, in all respects, and furthermore." (1) See Volume II, page 407; Volume XI, page 589; Volume XII, page 365.

[*Latin ed. p. 81*]

FRUITS AND DISTRIBUTIONS 81. FROM WHICH YOU GATHER:

I. As We Have Already Stated, It Is Certain by Law That Those Who Neglect or Disregard Their Duties Cannot Make the Daily Distributions, Which Are Granted Only to Those Who Are Present.

II. Only Those Are Exempt From This Legal Provision Who Are Excused by Infirmity, or by a Reasonable Necessity of the Body, or by Evident Benefit to the Church; But a Just Cause for Such Exemption Must Be Known to the Bishop.

III. According to De Luca's Annotations to the Council of Trent, Discourse 15, Number 15, It Is Commendable and Consistent with the Spirit of Trent to "Reduce All Prebends, and the Entire Income of the Chapter, to the Form of Daily Distributions."

IV. Canonically, All Fruits from Prebends Have Been Rightfully Denied for the Entire Period of Absence from the Diocese, Because Neither Was There a Cause for Exemption Permitted by Law, Nor Permission from the Bishop; Upon Which the Canon Could Obtain the Income of His Canonry, Which, According to Custom and the Chapter Statutes, Is Paid Out Entirely in Daily Distributions.

RETRIBUTION OR ABSOLUTION.

On December 17, 1881, Father Anthony Reported to the Apostolic See: That for 32 years he had Served as Master of Ceremonies in the Patriarchal Church; and that, by Virtue of This Office, He Had Become Accustomed to Going to Any Church in the Diocese on the Day Before It Was to Be Visited by the Prelate, "In Order to Prepare Whatever Was Needed for the Proper Performance of the Function, and Also to Supervise the Function on the Day When the Sacred Office Was Performed."

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 82*]

82 It is customary for Rectors and administrators of parishes, during the occasion of the proper visitation of their Church, according to ancient custom, to offer to the master of ceremonies small gifts, approximately twelve

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in number, as a form of recompense, in addition to provisions, which are provided by some Rectors of churches. The speaker said: "Indeed, I knew that Bishop M. had ordered his own to not accept such gifts; but, believing that these [gifts] were not included among those [prohibited], I freely accepted these offerings. However, since for some time I have doubted whether this practice is in accordance with the decrees of Trent, I therefore, for the sake of my own conscience, request an absolution from the Apostolic See, so that, for the time that has passed, it may be considered, and its most esteemed judgment may be applied for the future."

The Synoptic discussion. The prayers offered by the speaker seem to be worthy of a benevolent reception, since the sacred Canons, as well as to Bishops, but also to all those who accompany the Bishop in carrying out the visitation, expressly prohibit them from accepting anything, besides provisions, even if it is offered spontaneously. This is clear from Chapter 1 of the Roman Code concerning Censibus, in § 5, concerning Procurations: "Furthermore, let it be noted that neither he himself, nor anyone of his household, should presume to accept any gift, whatever it may be, and however it may be offered, for the sake of the visitation." Again, it is clear from the Council of Trent, Session 24, chapter 3, concerning Reforms: "All and each to whom the visitation pertains, let them beware... not to accept themselves, nor anyone of their household, anything for the sake of the visitation... besides that which is due by law, neither money, nor any gift, whatever it may be, even if offered spontaneously." Ferraris concurs in his Bibliotheca Verborum, number 26, concerning Procuratio. The Sacred Congregation [Consilium] decrees, as found in the Thesaurus Resolutionum, volume 6, section Marci Visitationis, in which, among other things, the following question was proposed: "Are the clergy obligated to provide anything to the ministers and other officials of the visiting Bishop?" The response was: "Only provisions are to be provided, according to the form of the Council." Furthermore, today, according to the very mind of the Council of Trent, in the aforementioned passage, with regard to those churches in the suburbs, as...

WHAT IS OBJECTED TO THE SPEAKER.

[*Latin ed. p. 83*]

RETRIBUTION OR ABSOLUTION 83: Regarding churches within a city's episcopal jurisdiction, no procuration is due, since no expenses are incurred, nor would it be due even if a custom existed for paying it, as decided by the Holy Office in Castrense, Procurationes, November 17, 1685. However, if it is established that the priest, Anthony, received something while accompanying the bishop during a pastoral visitation, his conduct appears to be reprehensible. The invocation of a custom does not alter this:

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for Trent has a "non obstante" clause, which nullifies any custom, even an ancient one. The purpose of the decree of Trent is to invalidate any contrary custom that may exist, and to prevent any such custom from arising at any time, as stated by Cardinal De Luca in *De Jurisdictione*, disputation 95, numbers 7 and 8; Pignatelli, *Consilia*, 134, number 16, volume 1; Gronzay, *De Beneficiis*, part 5, chapter 4, number 179 and following; Rota, decree 317, number 12 and following, part 16; and decree 22, number 18, and decree 192, part 48, *Recentiores*. Furthermore, good faith cannot be presumed in the priest, Anthony, because the sacred canons expressly prohibit the reception of such gifts and rewards, under any pretext; and this is confirmed by the confession of the orator himself. He admits that he has, for some time, been doubtful whether such practices are in accordance with the dispositions of Trent.

ARGUMENTS IN FAVOR OF THE ORATOR: On the other hand, the orator presents certain arguments that suggest that his prayers should be received favorably, not only for the future, but also for the past, because the principles of common law cited by him do not seem to apply to his case. Indeed, it is clear from the canons and decrees of the Council of Trent that they were issued either against bishops making visitations, or against those who are either relatives or members of the bishop's entourage. Furthermore, from the prayers offered by the orator, it is evident that during the time of the visitation, he was neither a relative of the bishop nor a member of his entourage, since he was not invited by the bishop, but rather offered his services during the pastoral visitation at the request of the parish priests, who called upon him, as a master of sacred ceremonies, to assist them, considering him more suitable than others to prepare everything necessary for such matters.

[*Latin ed. p. 84*]

84. OF RETRIBUTION OR ABSOLUTION. If, therefore, from what has been discussed thus far, it becomes clear that the Orator should be considered among those who form the Bishop's retinue, natural equity demands that he should receive some compensation for such service. For it is well known that no one should be required to perform their duty to the detriment and prejudice of themselves. But, even granting, though not conceding, that he was indeed part of the Bishop's retinue, and therefore the decrees of the sacred Canons could apply to him, nevertheless, a long-standing custom, invoked in his favor by the Orator, seems to legitimize the acceptance of such gifts. Indeed, some maintain that a legitimately introduced custom possesses the force of law, as Piringh states in *Canon Law*, Book 1, Title 65, and Reiffenst. in the *Decrees*, Book 1, Title 4, number 55. Regarding this matter, if the decree of Trent is valid in destroying a prior custom, it does not seem that it should be used to prevent the beginning of a custom. Therefore, since the Orator's mode of action does not fall under

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the censure of the Canons, and he is able to accept the offered money, it follows that there is no need for absolution. However, admitting for the sake of argument that such a favor is deemed necessary, it cannot be denied to him, since he acted in good faith, believing that he was not included among those for whom the Bishop's decree was issued. With the foregoing points noted, the following questions must be resolved: Concerning the "Custom," (1) Is it doubtful whether the Priest Anthony is able to receive a reward in this case? And, (2) To the extent that the answer is negative: Whether and how absolution should be granted in this case.

RESOLUTION. After considering the Sacred Canons, on December 17, 1881, the response was: (1) Negative, unless he provides his service, having been specially invited by the pastors of the church. (2) Affirmative in all cases, having made a verbal agreement with the Most Reverend.

[*Latin ed. p. 85*]

RETRIBUTION OR ABSOLUTION 85 From which it is gathered: I. From the Council of Trent, Session 24, chapter 3, concerning reforms, it is the principal purpose of the Holy Visitation by the Superiors that orthodox doctrine be instilled, good morals be maintained, vices be corrected, and the faithful people be encouraged towards religion, peace, and innocence. II. Nevertheless, all these things must be accomplished in the Holy Visitation with paternal charity... with modest riding and retinue, so that the visitors do not impose any burdensome expenses on anyone. III. Hence, it is strictly commanded that the Prelates themselves, or anyone of their company, should not accept anything for the Visitation... neither money, nor any gift whatsoever, in any form. IV. Nothing is to be accepted, except for provisions, for the cause of the Holy Visitation, so strictly has this been commanded, that it is hardly possible that the contrary custom, even if ancient, should prevail; indeed, the custom of not receiving provisions, money, or anything else, but of doing everything freely, must be observed by the visitors wherever it is in force. V. The Master of the Sacred Ceremonies appears to be wrongly separated from the company of the Prelate, since he follows or precedes the Prelate in whatever he does, for the cause of the Holy Visitation, arranges everything, and moderates the function of the Holy Visitation itself. VI. Regarding this matter, the Sacred Congregation, having disregarded the ancient custom, and having decided that something may be received on the occasion of the Holy Visitation, in opposition to the Council of Trent, with the following stipulations, it was resolved that the Master of Ceremonies may not receive anything from the Rectors of Churches, unless he has been specially invited by them.

[*Latin ed. p. 86*]

86 APPENDIX II. Offices and Masses for the feast day of Saint Lawrence of Brindisi, Confessor, and Saint Clara of the Cross, Virgin, on the 7th of

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July, and in the octave of the feast of the Holy Innocents.

G, with power, who makes tongues eloquent, admire. At the same time, he dedicated himself entirely to the mortification of the body. Having entered the Seraphic Order, and having received all the degrees of Holy Orders, except for the priesthood (m. t. v.), he offered his spirit of counsel and fortitude to Blessed Lawrence the Confessor, for the glory of God and the salvation of souls: grant that we, too, may, in the same spirit, know and accomplish His will. Through our Lord Jesus Christ.

In the province of Venetae, he made great progress in the sanctity of the house of God. Through humility, obedience, the study of prayer, and regular observance, he excelled in all things. Having received a thorough training, he devoted himself to the sacred Scriptures, so that he might fulfill the apostolic office. He was endowed with a singular talent and memory, and not only possessed philosophical and theological knowledge, but also learned the Greek, Hebrew, Chaldean, German, French, and Spanish languages; and indeed, he learned them so well that, whenever the opportunity arose, he could preach in these languages. The Hebrew language, in particular, was so well known to him that he preached to the Jews themselves, and they confessed that he possessed such skill in that language that they themselves did not have it.

The reason for this apostolic gift, which he possessed to the highest degree, was, as the documents of the Apostles attest, that the gift of tongues was given to him by God. And indeed, he did not only receive this gift, but also other graces of future sanctity. Free from youthful vanities, he devoted himself to one God, and began to practice the virtues that would lead to his future sanctity.

[*Latin ed. p. 87*]

He arrived, as events demonstrated, and composed harmonies; he bore hatred towards those whom he led to undertake great things: he spared nothing in the pursuit of the glory of the *catholica* religion, and it is customary for him to be granted [success]. Then, when *Honestum* prevailed, he built up the glory of God, the increase of religion, and the salvation of souls, and he effected it. With the help of God himself and with his preaching, he was ordained a priest, and then, truly, the greatest fervor of his spirit burst forth, and this is evidenced by the following signs.

Among these, the most celebrated is the victory over the Turkish army, which, against all hope, and indeed when all leaders were truly despairing of saving souls, was devoted to the salvation of souls. Not through chance, nor through fortunate circumstances, nor through vigils, nor through his own life, which he often reported having experienced in visions, but through the announcement made in Hungary, he led our people. He visited villages, cities, and fields. He permeated assemblies of princes, and gatherings of Jews and heretics. He spread throughout almost all of

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Europe, *Italiam*, Germany, Hungary, Spain, and Lusitania, benefiting all. In this tireless pursuit of the glorification of the divine and the urgent concern for the salvation of others, he spared no effort: he excelled in all virtues, and he accomplished them to a heroic degree, from which that incredible power for the salvation of others arose. Demonstrating all kinds of virtues, he showed himself to be a Catholic, a heretic, a Jew, a nobleman, a commoner, a soldier, to all lesser prefectures, and in all provinces of Etruria, Venice, and the supreme order of the entire kingdom, he was thrown, so that he might benefit all to Christ. He earned numerous merits for the *catholica* religion before kings and princes through embassies and missions. He was ardent in fulfilling the mandate of Christ the Lord, and his compassion for God was so intense that he could not contain his tears. It cannot be said that he neglected any part [of his duty]: he was never idle. He was a devoted servant of the Virgin *Mariae*, to whom he had a singular gift of the tongue, a gift highly esteemed by others. He devoted all his time to this, and he surpassed all other occupations. He converted countless sinners to repentance; he brought heretics to renounce their false doctrines through prayer; he refuted the Jews; he led the most lost of women from the brothel; he devoted himself entirely to this, and it consumed all his time.

[*Latin ed. p. 88*]

88. APPE >ix n. bat. He often fell into ecstasy. He was exceedingly grieved when he saw God offended, and he was greatly concerned about the injuries done to the Catholic religion. It seemed as though he thought of nothing but one God, one charity, and the salvation of souls. He was endowed with the gift of prophecy, and his words penetrated the depths of hearts.

Cap. I. In those days, Jesus called together his twelve Apostles, and, having given them power and authority over all demons, and having commanded them to cure diseases, He foretold to them what would happen in *summa*.

Homily of the Most Reverend Bishop of Bonaventura.

Exposit. Et reliqua.

9. In Cap. 9. Luke. The Apostles are therefore called "Apostles," because they were sent; for "Apostle" means "sent." But they had been sent on a mission to preach, according to the words: "He did not send me to baptize, but to preach the Gospel."

One of the Apostles fell ill from fatigue, having been worn out by his labors. He bore his suffering with great patience, and, having received all the sacraments with great devotion, he foretold the day of his death. He desired to die, and to be with Christ. On the twenty-second of July, in the year one thousand six hundred and sixty-two, the fruit of the Lord's

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miracles was declared. After these miracles had been duly proven, Pope Pius VI, the Most Holy Pontiff, solemnly added him to the number of the blessed.

He departed from *summa*, on the twentieth day of December, in the year one thousand eight hundred and eighty-one.

It can also be said that the grace of the Holy Spirit is the kingdom of God, according to the words: "For the kingdom of God is not meat and drink, but justice, and peace, and joy in the Holy Spirit." And again: "Behold, the kingdom of God is within you."

It can also be said that the glory of the eternal kingdom is the number of the elect, according to the words: "Amen, I say to you, unless a man be born again of water and the Holy Spirit, he cannot enter into the kingdom of God."

[*Latin ed. p. 89*]

X n. 89 tribus De viii. The reading itself clearly shows that the Apostles are, in every way, those sent to preach the Kingdom of God; "You are my sons." Secondly: "For we preach not ourselves, but Jesus Christ, our Lord." Thirdly: "I have appointed you that you go, and that you may bear fruit, fruit that may endure, and that through it you may receive grace and eternal glory." And because he who is sent thus, because of the authority of preaching which was granted to him, he can say: "The Spirit of the Lord is upon me, because he has anointed me to heal the sick; he has sent me to preach good tidings to the poor." Therefore, he says: "And he healed many who were sick, and cast out many demons." And thus, the sign of the spiritual mission is to preach, and the sign of the mission is healing, so that through healing, the truth may be preached according to that which is written: "And they went out, and preached everywhere, the Lord working with them, and confirming the word with signs that followed."

MISSA.

Introit: In the words of the Lord, light shines through all things, and the glory of the Lord is manifested to the people, even to those who are freed from diseases and vices. (Ps. 67) "Arise, O God, and scatter thy enemies; let them be dispersed that hate thee. O God, let not the heathen come nigh unto thy inheritance: let the wild beasts make no noise in thy sanctuary. God is come, and hath not kept silence: fire shall devour his adversaries. Thou hast rebuked the earth, thou hast shaken it: thou hast shortened it in thy displeasure. The heathen roared like the sea, the ends of the earth did shake at the presence of thy wrath. Declare thy works, O Lord, that they may be known in the power of thy glory. The Lord hath received and answered all the prayers of the earth. Let all the earth worship thee, and sing praises to thee: let them sing praises to thy name. Selah. To him that rideth upon the cherubim, I will give thanks in the midst of the heathen.

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God is come, and hath not kept silence: fire shall devour his adversaries. The heathen roared like the sea, the ends of the earth did shake at the presence of thy wrath. Declare thy works, O Lord, that they may be known in the power of thy glory. The Lord hath received and answered all the prayers of the earth." (R.) Glory be to the Father.

Collect: O Lord, you have bestowed the spirit of counsel and fortitude upon your blessed Confessor Lawrence; grant us, through his intercession, to know and to do your will in the same spirit. Through our Lord.

Reading from the Epistle of blessed Paul the Apostle to the Corinthians. 2 Corinthians 5. The love of Christ urges us, not because we are alone, but because we are all one in him. For if one died for all, then all died. Therefore, we are no longer to think of ourselves, but of others, as if the sufferings of another were our own. And who will be our judge? God will be our judge. Therefore, let us reconcile ourselves to God, and let us love one another.

[*Latin ed. p. 90*]

II. APPENDIX n. Many are dead; and Christ died for all: that those who live may no longer live for themselves, but for him who rose again for them. Therefore, we know nothing according to the flesh. And if we did know Christ according to the flesh, we know him no longer. But now we know him in a new way.

Sequence of the Holy Gospel according to Luke. In those days, Jesus called together his twelve Apostles, and gave them power and authority over all demons, and to heal the sick. And he sent them forth to preach the kingdom of God, and to heal the infirm. And he said to them: "Take nothing for the journey; neither a staff, nor a wallet, nor bread, nor money, nor two tunics. And whatever house you enter, there remain; and from thence depart. And as for those cities that reject you, go away from them and say, 'The dust of your city we wipe off our feet.'" And so they went their way, preaching the Gospel and healing everywhere.

Gradual. Justice of God is revealed in him. *Exodus.* My strength and my song is the Lord; and he hath been my salvation. *Isaiah.* My God, my strength, he hath protected me; and he hath made my feet like the feet of a hart. *Psalm.* He hath made my soul like a chosen arrow. He hath made me glad with his countenance.

Secret. Let us be made worthy, O God, to approach the heavenly table, that we may be worthy to taste the sweetness of the most powerful Laurentius, who was so sweet in his life of penance.

Communion. In the sight of the powerful, he rejoiced. *Sapience.*

[*Latin ed. p. 91*]

APPENDIX: Tium [Place not located] will admire me, and the faces of the princes will marvel at me. In the Communion of your grace, O Lord, we shall be filled with perpetual joy: blessed Laurence tasted the Lord in

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the sacred altar. C II. Nocturnal Office. Reading IV. In Montefalco, in the town of Umbria, a Virgin named Joanna, born of a noble family, from her earliest years showed signs of holiness: for our Jesus, almost from infancy, so devoted herself to Christ, your Son, that she dedicated herself to prayer, vigils, and good works, so that she rarely rested, but if necessity compelled her to sleep, she would lie down on the ground, if ever sleep should overcome her. May the God of the Holy Spirit, who through all ages, lives and reigns forever and ever. Amen.

DAY EIGHTEENTH. IN AUGUST.

On the feast of Saint Clare of Montefalco, a Virgin of the Order of Saint Augustine, recently established, she humbly requested to be admitted.

After her prayers were heard, and her vows were fulfilled, she said, "Lord, you have glorified your holy Virgin Clare, renewing the mysteries of your Trinity in her body and with wondrous signs: grant that we may pray; through her prayers and her example, may we remember the bitterness of your passion, so that, when once admitted to the conversation of mothers, we may, in the midst of the cold, tread with bare feet upon the snow a hundred times. In the Nocturnal Office, Reading I. The Scriptures read on Sunday. Reading V. May we merit the grace to break the bread with the portress, the administrator of the monastery, and to taste the bread. May she, through the grace of God, solve the seven-day fast, resisting that which is repugnant, and excelling in all virtues, and may she be an example to other virgins. Her abstinence was incredible; she ate bread.

[*Latin ed. p. 92*]

92 APPENDIX: and water, only for drinking, and that too during the day, sustaining life; II. Once, having seen and revealed a harsh trial, she foretold it. Through intimate thoughts, by dominating her body, through secret conversations, and through flagellations, she would extract herself. More than once, these afflictions and the feelings of her soul troubled her for two years, and sometimes even caused her to fall ill. When she saw one of them, hidden, possessed by a demon, she severely rebuked the demon, concealed the fault, and did not relent in the usual rigor of her life. Towards the poor, she showed such charity and gravity, that she often clothed them with garments, and she never rebuked anyone, but rather, she called them, by divine grace, to heaven, and after enduring ten years at the monastery door, she was, in the year of salvation one thousand eight hundred and eighty-one, in the sixty-eighth year of her age, on the Kalends of September, taken by the most holy Immaculate Conception of the Mother of God, Pope Leo the thirteenth (Saint R.). It is said that she was accustomed to contemplate the torments and sufferings of Christ with an incredible feeling of the soul. But one day, the Savior, clothed in a robe, carrying a cross on his shoulders,

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impressed the mysteries of redemption upon her heart, and marvelous signs were seen present. Also, on that day, three globules were found in her body, in the form of a triangle, exhibiting the symbol of the most holy Trinity.

Homily of Saint Augustine, Bishop.

Lectio vii. Nocturno. Lectio sancti Evangelii dum Matthaeum.

B). *Dilexistiiustitiam.* Serm. 93. de Scrip. cap. 2.

"O quam pulchra sunt tabernacula tua, Domine! Desiderium et spes mea est in te."

Then shall the kingdom of heaven be like to ten virgins, who taking their lamps went out to meet the bridegroom and the bride.

[*Latin ed. p. 93*]

IX. 93. Et quinque stultae, non facile in quinque, et quinque virgines odagari potest. Verumtamen secundum ea continet ipsa stultae, non facile in quinque, et quinque virgines, et omnes omnino sunt animae christianorum. Sed ut dicamus vobis, quae lectio quam caritati vestrae hodie quod Deo volui recitari, quantum mihi Deus dignatur intellectum donare, non qualescumque minus morales animae quae habent catholicam fidem et habere videtur ista parabolam, sed videntur bona animae pertinere, quae propria et ex celliori sanctitate virgines in prudentes, Ecclesia nominantur, quas etiam usitatiore vocabulo sanctimoniales appellari consuevimus: sed, nisi fallor, haec similitudo "universam Ecclesiam" ad pertinet. Opera in ex Ecclesia Dei, ipsis et quinque et sunt fatuae. Omnis anima in corpore ideo qui nario numero censetur, quia quinque sensibus utitur. Nihil est Quamvis , etsi illas solas intelli- geremus , sunt ? videndo, aut audiendo, aut ad- rando, aut gustando, aut tangendo. Qui ergo se abstinet ab illis revocetur. Forte autem dicat aliquis: quid si multae sunt nomina, et tam paucae sint in veritate ut vix decem inveniantur? Non ita est. Nam si solas decem intelligi vellet, non ibi ostenderet quinque fatuas. Si enim multae sunt virgines quae vocantur, quare contra quinque ostia domus magnae clausuntur? Sed si bonum R). Haec est virgo . Lectio I ntelligamus omnes R). Medianocte . Nona Lectio erit s. Agapiti Mart.; si vero transferri contingat, erit sequens Lectio ix. est abstinere ab illicitis sentiendi motibus, et ideo unaquaeque anima christiana virginis nomen accipit, quare ergo, carissimi, ad nos, idest ad universam quinque admittuntur et quinque repelluntur? Et virgines sunt, et omnino Ecclesiam, pertinere istam parabolam, non ad solos praepositos, nec ad solas plebes; sed prorsus ad Quare illicitis sensibus; lampades habent omnes. ergo quinque et quinque virgines? Istae propter opera bona; de quibus

[*Latin ed. p. 94*]

94 APPENDIX I I . The Lord says: "Let your loins be girded and your lamps burning, that you may be ready for the coming of the Bridegroom,

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so that you may deserve to enjoy the blessedness of the Trinity."

Those who are girded about the loins are men: in girded loins, one lives and reigns with the Father and the Holy Spirit, in the Trinity. Burning lamps signify good works. If, therefore, abstinence from illicit things is a good thing, from which the name "abstinence" is derived, for all the ages of ages, why are some things admitted, and others rejected? I still seek: the Gospel has made my mind attentive. Even those who carry the lamps are distinguished, some as prudent, others as foolish. From what can we discern this? From what can we judge? Hear: "Let them be a sign upon your heart, and let them be upon your arm; for the lover is strong as death, her passion is as fierce as flames." Something great is signified by the lamp, very great indeed. Do you think the lamps are a sign of charity, or of flames? We praise You, O God.

MASS.

Introit: Gal. 2. "For I live, no, rather Christ lives in me." Many cannot extinguish charity, even though the rivers may overwhelm it; if a man should give all the substance of his house for love, he would not despise it. Truly, it is in me Christ, who loved me, and gave Himself for me.

Gradual: Psalm 44. "Myrrh is my perfume; I have all things in common with Jesus Christ." Through Him, the world has been crucified to me, and I to the world.

Prayer, f. f.

"Phil. Glory to the Father."

"He who lives in Christ is enriched, and he who dies is enriched."

"To You, O God, we give glory, for You have made Your Holy Clare, a Virgin, illustrious in her own body, through the mysteries of the Trinity, and through her prayers and her imitation, You have renewed us; grant that we may partake of the Passion of Jesus Christ, yesterday and today, Himself and in the ages."

Alleluia, Alleluia. Heb. 13. "Alleluia."

"Christ is our Paschal Lamb, Alleluia. Alleluia."

The seventy-seventh verse and the following are omitted.

[*Latin ed. p. 95*]

APPENDIX. Antiphon. Psalm is in heaven? above 72. [X n. 95* What have all my neighbors said to me? and they have slept. And what have I desired from you? In the middle of the night, a cry was made: behold, my strength has failed, and my heart; O God, the God of my heart, and the God that is my portion for ever. Then they arose, lighting their lamps. My God, it is good to trust in you; for in the Lord is my hope, that I may announce all your praises in the gates of the daughter of Sion. During the time of Easter, the gradual with verse is said, omitting the antiphon: to us, and to you, give light. Alleluia. 1 Kings 2. My heart rejoiced in the Lord, and my horn

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was exalted in my God: my mouth was opened, and it was filled with your praise and with the salvation of your lips. Alleluia. Colossians 3. Alleluia. My life is hidden with Christ in God. Alleluia. Offering. The sequence of the holy Gospel according to Matthew. Matthew 25. At that time, Jesus said to his disciples this parable: The kingdom of heaven shall be like ten virgins, who took their lamps and went out to meet the bridegroom. And five of them were foolish, and five were wise. The foolish took their lamps, but they took no oil with them. But the wise took their lamps and vessels with oil. Now, while the bridegroom delayed, all the virgins began to slumber. At midnight, there was a cry: Behold, the bridegroom! Come out to meet him. Then all the virgins arose and trimmed their lamps. And the foolish said to the wise: Give us some of your oil, for our lamps are going out. But the wise answered, saying: No, lest ours not be sufficient for you and for yourselves; go rather to the vendors and buy for yourselves. But while they went to buy, the bridegroom came, and they who were ready went in with him to the marriage feast, and the door was shut. Afterward, the other virgins came, saying: Lord, Lord, open to us. But he answered, saying: Amen, I say to you, I know you not. Watch therefore, for you know not the day nor the hour. My life is hidden with Christ in God. Alleluia.

Let us pray. O Jesus Christ, holy, humble, and devoted, hear the prayer of Saint Clare, in whose heart you have wonderfully renewed the mysteries of your Passion; grant that through the power of this offering, the benefits of your Passion may be abundantly conferred upon us, to your everlasting glory. You live and reign, world without end. Amen.

[*Latin ed. p. 96*]

96 APPENDIX I I . Holy God: may your hearts be inflamed throughout all ages. Have mercy on the heart of Saint Clare of Octava, and through the mysteries of the most holy Communion, grant us [it]. Amen. Preface in Psalm 20. That through your prayers and the sweetness of your mercies, we may attain worthy fruits of penance, and you may reign. Holy God: throughout all ages, may you be united with the Father in blessedness. Amen. Almighty God, who, eternally burning, [add after the words of devotion]: The Most Holy Trinity. The sixteenth day before the Kalends of May. In Rome, the birth of Saint Benedict Joseph Labre, Confessor, distinguished by his contempt for himself and his extreme voluntary poverty. The tenth day before the Kalends of June. In Rome, the birth of Saint John Baptist De Rossi, Confessor, distinguished by his patience and charity in evangelizing the poor. The fifteenth day after the Kalends of September. The tenth Leo solemnly added her to the ranks of the saints. The eleventh day before the Kalends of August. In Lisbon, the birth of Saint Lawrence of Brindisi, Confessor of the Order of the Minor Friars of Saint Francis of Assisi, assigned to him by Leo the thirteenth Supreme Pontiff, his feast day being the ninth of July. Ministers General, illustrious for their divine deeds,

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are inscribed in the annals of the saints.

[*Latin ed. p. 97*]

97 Letters in which the Most Holy Pope indicates that the spirits of the Bishops of Hibernia should be incited to moderate, so that those things which they justly request, abstaining from all violence and from clandestine societies, may be able to rightfully obtain them. TO OUR BELOVED SON, THE MOST HOLY EMINENT PRIEST, THE ARCHBISHOP, AND TO THE VENERABLE BROTHERS OF THE ORDER OF ST. BENEDICT IN DUBLIN, LEO PP., CARDINAL OF HIBERNIA, TO THE BISHOPS. GREETINGS AND THE APOSTOLIC BENEDICTION. The charity of benevolence, with which we embrace the people of Hibernia, and whose increase this very time of difficulty seems to require, leads us to follow the course of your affairs with singular care and a paternal spirit. — Yet, from this very consideration, we receive more concern than comfort, because it is not yet permitted for us to see the public affairs among you in that state of peace and flourishing which we desire. For, on the one hand, grave inconveniences still weigh heavily; on the other hand, the fickle movements of minds lead many rashly to turbulent counsels; and there have not been lacking those who have defiled the hope of public happiness with atrocious bloodshed, as if it were possible to find happiness in public disgrace and wickedness. Because of these things, you, Our Beloved Son, Venerable Brothers, were, as we knew, and recently observed from those things which were decreed by you in the last assembly in Dublin, deeply concerned. For the common good, you prudently taught what each one ought to avoid in such a critical moment, and in the midst of such a struggle. — In this, you have acted fittingly, both in your episcopal office and for the sake of the republic. For men most greatly need counsel when, acting with some vehement passion, they see the advantages of things with deceptive judgments; and when, being carried away by some impulse, they are led to abandon honesty, it is the duty of Bishops to moderate the spirits of the multitude, and to lead them to the just way.

[*Latin ed. p. 98*]

98 LETTERS: It is necessary to recall, in all matters, moderation through timely exhortations. Indeed, the divine precept, which is best observed at the most opportune time, is that one must first seek the Kingdom of God and His justice: so that all Christians, in every action of their lives, and even in civil matters, may always consider their eternal salvation, and may place all earthly things below religious duties. And while observing this precept, it is permissible for the Irish to seek relief from the afflictions of their fortune; it is permissible for them to contend for their rights; for it must not be thought that what is permitted to every nation is not permitted to Ireland.

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However, it is a matter of honor and utility, and it must be seriously considered, that it is both unjust and shameful to defend a cause that is itself unjust. It is truly contrary to justice to use any force, especially in clandestine societies, which under the guise of defending rights, almost invariably seek to subvert the order of the state. How much such societies should be avoided by every honest man, as Our Predecessors and We ourselves, and as you appropriately reminded us in the Dublin assembly, so let it be. Nevertheless, with these dangers still present, We must often urge all Irish people, through the sanctity of the Catholic name, and through the very charity of their homeland, to have nothing in common with such societies, which are of no benefit to those things which the people justly demand, and which often drive those who are involved in them to commit crimes.

Since the Irish people, and not undeservedly, are called Catholics, meaning, as Augustine interprets, "guardians of integrity and followers of the right path" (1), let them fulfill their duty, and let them strive to be what they are called, and let them understand that the first freedom is to be free from crimes (2), and let them conduct themselves in all their lives in such a way that no one takes from them the punishments prescribed by the laws, as a murderer, or a thief, or a sorcerer, or one who desires the property of others (3). It is fitting that your episcopal care for the people should be aided by the entire clergy, through virtue, labor, and industry.

Regarding the matter of establishing schools, especially for younger priests, we judge it to be a right and appropriate measure for the times. For priests, if ever, certainly in these popular upheavals, must be diligent and industrious assistants in preserving the order. And because everyone flourishes best when they are approved, they must strive to move the hearts of others through the gravity, constancy, and moderation of their actions and words: and they must do nothing that would (1) *Lib. De vera Religione*, n. 9. (2) St. Augustine, *Tractates*, XL1 on John, n. 10. (3) 1 Peter 4:15.

[*Latin ed. p. 99*]

LETTER 99, though seemingly arising from prudence and a desire to appease minds, may appear foreign. It is easily understood that the clergy will be such as the exigencies of the times demand, if they have been thoroughly instructed in wise discipline and the best precepts. For, as the Fathers of Trent warned, the age of adolescence, unless from a tender age it is instructed in piety and religion, will never perfectly and without the greatest and most singular assistance of Almighty God, persevere in ecclesiastical discipline (1). Through this path and method, we believe that Ireland will achieve the prosperous condition it desires, without anyone being wronged. Indeed, as we have already indicated to you, we are confident that those who administer public affairs will provide sufficient resources

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for the Irish, as they request. This is not only what truth suggests, but also what prudent civil administration dictates, since it cannot be doubted that the safety of Ireland is linked to the tranquility of the entire empire. – We, therefore, encouraged by this hope, will not cease to assist the Irish people with the authority of our counsel, and will pour forth fervent prayers and acts of charity to God, that He may look favorably upon this people, already so endowed with virtues, and that, with calmed disturbances, it may finally attain the peace and prosperity it desires. We impart to you, our beloved son, our venerable brothers, to the clergy and to the entire people, the Apostolic Blessing, as a pledge of these heavenly gifts and a testament to our most sincere benevolence. Given in Rome, at St. Peter's, on the 1st of August, in the year 1832, in the fifth year of Our Pontificate. LEO PP.

(1) Session XXIII, Decree on Reform, cap. 18, XIII.

[*Latin ed. p. 100*]

100 FROM THE HOLY CONGREGATION OF THE COUNCIL FOR ELECTION, December 17, 1881. SUMMARY OF FACTS. The Chapter of the Cathedral Church of V., having been duly assembled in its own hall for the election of officials, proceeded with the election. However, it transpired that Canon Lazarus, who in the election for Secretary, after seven scrutinies, had obtained an equal number of votes with another canon, appeared to have voted for himself in order to obtain a majority of votes in his favor, whereas in the preceding scrutinies he had given his vote to another. Since this course of action appeared to a majority of the Chapter to be contrary to common law, a new scrutiny was ordered; in which, however, out of eleven canons, Lazarus obtained nine votes in his favor; and it also appears that he voted for himself on this occasion. Therefore, it was deemed necessary to seek an opinion from the Apostolic See as to whether the election of Canon Lazarus, thus completed, could be considered valid.

SYNOPTIC EXAMINATION: NO MENTION IS MADE OF THE ELECTION OF LAZARUS; for not only is common law violated, but also the Constitutions of the Chapter and the synodal laws. Indeed, Canon Law, as we learned in Cap. Didactic, cause 24, question 1, Cap. In Scripturis, cause 9, question 1, Cap. Cum ad nostram, prohibits anyone to whom the collation of benefices or dignities pertains from instituting himself. For, as Barbosa states in De Officio et Potestate Episcopali, Allegation 72, number 86: "There must be a difference between the one who gives and the one who receives..."

[*Latin ed. p. 101*]

ELECTIONIS 101 "inter eligentem et electum." Ad hoc pertinet quod Reiffenst. Lib. 3, decretorum, tit. 8, §. 4, de Iure Praesentiae statuit. Et hoc manifeste decretum fuisse lege optima patet. Nam praesentatio, seu electio

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ipsius sui, sapit vitium ambitionis, quod in sacris muneribus oboendis prorsus excludi debet, sicut sacrosancti canones districtim praecipiunt. Quam dispositionem iuris Pontificii in iure Caesareo fundamentum habere manifestum apparet ex multis legibus, praesertim ex praetore, ff. de tutore et curatore, tit. 1, §. 1, ff. de contractibus emptis et venditis, et praesertim ex tit. 1, ff. de auctoritate et consensu tutoris, in qua habetur – ibi – "in rem suam auctorem tutorem fieri non posse." Quia haec ita sunt, nemo mirum habere debet si sacra Congregatio, principia exposta secuta, semper ita iudicavit, quoties ipsius decisioni huiusmodi controversiae propositae fuerunt, sicut, inter alias, patet ex Iudicio suffragandi diei 19 Maii 1877. Tunc propositum erat dubium: Num Canonicus, qui a Archiepiscopo proponitur ad officium iudicis et Examinatoris synodalis in casu, habeat ius suffragandi in comitiis capitularibus? Sacra Congregatio respondit: negative. (1) Hisce in iure praestitutis, cum in facto consistere videatur, quod Canonicus Lazzarus in comitiis capitularibus, in quibus de novi secretarii electione agebatur, suffragium sibi ipsi dederit, sponte sua fluit ut huiusmodi electionem irritam et 'nullam declarari oportere. Nec potest objici argumentum desumptum ex capitulo de electione, in quo statuitur, Canonicum, citra vitium ambitionis, in sui electionem consentire posse, et aliorum numerum augere, eorum votis accedendo. Huiusmodi enim exceptioni occurrit, si animadvertendo dispositionem citati capituli, tunc tantum utiliter invocari potest, cum electio per vota publica, seu per compromissum, non vero, quoties, ut in casu, per scrutinium fiat, et haec esse doctrinam sacrae Rotae, coram Clementem XIII, loco citato, num. 9 et sequentes. Praeterea nulla dici debet electio taliter facta; quia huiusmodi methodus eligendi adversatur legi synodali et statutis Capituli. Ad haec adjungitur, quod in actu scrutinii aliquo e schedae delatae fuerint vicinioribus canonicis ut legerent, et (10,nae «tio li!if;<: relata fuit Vol. X, pag. 273.

[*Latin ed. p. 102*]

102 The secret of the election lacked a vote. Therefore, it is clear that this election should not be declared invalid. The election of Lazarus appears valid. Canon Lazarus stated that his election was in accordance with the capitular constitutions, which stipulate that the election of officials must be made through secret votes, which was indeed done through ballots. Of the eleven canons who cast votes, nine voted in his favor, so his election remained firm. Regarding the vote given to him, he observed that it could be freely asserted, and therefore also freely denied; but, given that a vote was given to him, and not refused, his election cannot be invalidated by it, since it is not contrary to the provisions of canon law, and various resolutions of the Sacred Congregation. Furthermore, he brought forward the text in chapter [referring to a chapter on elections], arguing that, in law concerning elections, it is stated that a canon who sees himself nominated by others can consent to his election by adding his vote to theirs. Indeed,

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Gonzalez, under the aforementioned chapter, number 3, writes: "For, in order that an election may be held, it is only necessary that the majority of those electing be present; as is stated in the title preceding this one, that the majority should elect the one to be elected, but that the majority should be present in his election, and it is found that..." Furthermore, concerning the matter of De Luca, in the book on Canons, discourse 26, number 3 and following, it is written: "Although it is accepted... that the provision of the aforementioned decree proceeds, not only in prelacies, but also in lower benefices; nevertheless, this proceeds when it is a matter of an act that requires, for its perfection, the authority of a superior, as is the case with an election, which requires confirmation. Or, when it is a matter of a presentation, or nomination to a benefice, from which a provision, or institution by a superior is necessary. Otherwise, in this subject matter, in which neither a true election, nor a presentation, or nomination, is involved, requiring a subsequent act for its perfection; but rather, it is a matter of a simple designation, as if by mandate, which the Bishop or Prelate, or the Chapter in his place, is said to give: which mandate is not essential to..."

[*Latin ed. p. 103*]

ELECTIONIS 103 » Exigit scripturam, sed etiam oretenus dari potest. » Animadversum etiam fuit, ex Cap. cum in iure de elect. decerni validam electionem illius qui, obtenta suffragiorum medietate, electioni de se factae, voto suo consentit: et ideo eo magis electio Lazari valida dicenda erit, cum ex undecim canonicis, novem eius favore votum dederint. Hisce praemissis sequens propositum fuit enodandum Dubium. An Canonici Lazzari in Secretarium capitularem electio sustineatur in casu. RESOLUTIO. Sacra O. O. re perpensa, sub die 17 Decembris 1881 censuit respondere : Affirmative et amplius. (1) fi) Recole Vol. XIII . pag. 3 9 0 . uti canonici Lazzari in themate uti valida relata fuit alia quaestio de Vicarii capitularis electione, liuic affinis. In illa set, quod etiam agitur de Canonico qui sibi votum prium votum dedisse in ultima votatione. non apparet, illum sibi pro- dedit, ut eligeretur Vicarius Capitularis. Eoquod videns se eligi «Confer etiam quidquid per nos adnota- alios , voluit , citra vitium tum fuit pag. 397. Noluit illo in casu consentire suae electioni, pluries a sociis S. C. C. pandere suam sententiam ; sed, peractae, sed perperam ob votorum pari- uti ibi adnotavimus, tatem cum alio candidato. Nam id per- videtur ex DD. ac nominari per ambitionis, sententia, valide eligi posse in Vicarium agendo, in eo adfuit maior votorum pars, Oapitularem, Canonicum, qui votum sibi quod iuxta DD. satis est in huiusmodi dedit. electionibus, in quibus haud requiritur, Nam in Cap. quia propter prae- scribitur electionis forma, Praelatorum ad earumdem propria; Superioris. Secus autem, nobis videtur, store quorum interitu Ecclesia viduatur. In electione pa- perfectionem, auctoritas autem V. dicendum foret quatenus in prima vota- Capitularis, et officialium Capitularium tione secreta Lazzarus votum sibi dedis- vera electio non fit, sed ag-

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itur de sim- set ; quia ignorando an alii canonici in plici eum concurrerent, videretur potius seip- deputatione, quae etiam oretenus dari posset. Hinc dic^ cosse videtur quod electio sum ambitiöse eligere, electioni consentire. quam aliorum.

[*Latin ed. p. 104*]

104. CONCERNING DISTRIBUTIONS (1) On January 28, 1882. SUMMARY OF THE MATTER. The parish priest of the Cathedral reported to the Most Reverend Chapter that he had been excused from certain distributions on several days, because he was absent from the choir in order to attend to the spiritual welfare of the faithful and to know his flock. He also reported that he had been excused from various feast days, on which he is accustomed to explain the Gospel to the faithful. For while he prepares for this explanation of the Gospel, he composes it, and after it, he rests for some time; the conventual Mass, and the Hours of Sext and None, are celebrated in the choir. He stated that he found it burdensome to be deprived of these distributions during a time when he is engaged in the good of souls, and therefore he requested a decision from the Most Reverend Chapter, so that he might know with a safe conscience whether he could receive these distributions, or whether he ought to be excused from them. He also requested this decision concerning his titular coadjutors (who are required to be present in the choir as choral chaplains), for the time when they assist the parish priest, either because he is ill or hindered, in attending to the spiritual welfare of the faithful, or in explaining the Gospel. The Chapter, having considered this petition, issued a contrary opinion, both concerning the parish priest and concerning the coadjutors. DISPUTATION. WHAT FAVORS THE PARISH PRIEST. It seems to be clearly evident that the parish priest, being absent from the choir for the purpose of preaching the divine word, or attending to the spiritual welfare of the faithful, or for any reason related to the good of the souls entrusted to him, should be considered, by a legal fiction, as being present in the choir, and therefore should be able to receive the daily distributions. This is clearly stated in the Council of Trent, Session 22, Chapter 3 – there – (1) Recole, Vol. VIII, page 135, and Vol. XIII, page 102.

[*Latin ed. p. 105*]

DISTRIBUTION [OF INCOME] 105. "But if any of the aforementioned dignitaries... are burdened with the care of souls... then, for the time during which they are absent from the church under their care and are engaged in ministry, they shall be considered as present and participating in the divine services, and shall receive distributions in the cathedral and collegiate churches." Soon after, Pope Benedict XIV confirmed this disposition of the Council of Trent in *Instit. Eccles.* 107, § 56: "He who has the care of souls in that church in which he is a canon, if he is actually engaged during that time

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in the exercise of those duties pertaining to the care of souls, shall receive the daily distributions." Numerous resolutions of the Sacred Congregation of Rites are in harmony with these legal provisions, especially that of Milan, February 9, 1809, in which it is stated: "A cleric who has the burden of the care of souls attached to him, if, during the time that divine services are celebrated, he hears confessions, or performs other duties pertaining to that care, he is entitled to receive the daily distributions, even if he does not participate in the divine services." Also, Tortona, September 19, 1643, *lib. XVII Decret*, and Monreale, June 8, 1726, and December 6, 1732, and elsewhere. To prevent the possibility of abuse by a parish priest, the Sacred Congregation of Rites and the Royal Decree in Argentina, dated March 1, 1861, state: "And so that no one may abuse this benefit, the Sacred Congregation, aware of the responsibility of the parish priests in this matter, has recently warned..." Indeed, if a canon penitentiary and a theologian are present in the choir while fulfilling their duties, they are entitled to distributions (Naldus V., distribution, no. 5; *Bonae, de distribut.*, Vol. 2, p. 2, § 5, no. 4). Moreover, if a theologian is entitled to receive the distributions of the day on that day, much more so should a canon appointed to the care of souls be considered as present in the choir for the purpose of receiving distributions on the day in which he either delivers a sermon to the people, administers the sacraments, or performs other duties proper to a parish priest. But more importantly: not only are a canon penitentiary while hearing confessions, and a canon theologian on the day he lectures, considered present in the choir and entitled to distributions, but also a Capitular Vicar who is absent from the choir.

[*Latin ed. p. 106*]

106 It is held that distributions [of alms] are not to be made for the sake of performing service to the Church, but for the sake of administering justice, and that, as if present in the choir, they should be considered effective for the benefit of those receiving them. Scarfant, *Lib. 11, Tit. 10, n. 19*. Corrad, *lib. 5, cap. 6*. Given these things, it seems safe to conclude that a parish priest, absent from the choir for the sake of preaching, may receive daily distributions. Moreover, it appears that such distributions should be granted to him even during the time in which he is absent from the choir, because he is occupied with fulfilling the care of souls entrusted to him. Indeed, in the most holy Council of Trent, Session 23, concerning reform, it is written: "Since it has been commanded by divine precept that those to whom the care of souls has been entrusted must feed their flock, offer sacrifice for them, and nourish them with the divine word, the administration of the sacraments, and the example of all good works, and that they must also show paternal care for other miserable persons, and undertake other pastoral duties, etc." Furthermore, the parish priest endeavors to demonstrate that he ought to be considered as if present in the choir, even

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when he is visiting his parish, in order to tend to the state of souls, because such actions are most closely related to the care of souls and contribute to the spiritual well-being of his parishioners. Therefore, since it is clear that preaching the word of God to the people and tending to the state of souls is a duty connected with the care of souls, the parish priest concludes that he cannot lose the daily distributions, even during his absence. However, not only common law, but also the most consistent practice of the Sacred Congregation, and even the custom itself, which has been in force in the diocese for many years, seem to favor and support the requests made by the parish priest. There is no doubt that this custom should be maintained in its full strength; for it does not seem to be unreasonable, nor does it undermine the principles of ecclesiastical discipline, nor does it offer an opportunity for sin, nor does it appear to be contrary to good morals. On the contrary, it is perfectly in accordance with sound reason and the dispositions of ecclesiastical law.

[*Latin ed. p. 107*]

DISTRIBUTION 107: As if present in the choir, the Parish Canon should receive the daily distributions, who, either by preaching, or by attending to the spiritual welfare of the faithful, or by performing some other duty attached to the parish office, exerts himself for the good and salvation of the Christian people. Those, however, who, with the favor of the Parish Priest, are disputed by the Chaplains of the choir, and who, when assisting the Parish Priest in the exercise of pastoral care, seem to be able to receive them, according to the noted rule of law: Where the reason is the same, the same disposition of the law should be. And indeed, the Sacred Congregation of the Council, in the document *Adrien*, of May 19, 1877, discussed whether daily distributions and funeral emoluments should be granted to Vicars and Curates by the choir, or by other religious functions, in the absence of those who are present, because either they were receiving sacramental confessions, or they were imparting the sacred Catechism to the people. The question then was: Whether and how assent should be given to the requests of Vicars and Curates in the case: The response was: Vicars and Curates should receive distributions, concerning which they are burdened with prayers for days and hours lost, etc., in the absence of those present, which, according to the will of the testator or donor, are granted only to those who are truly interested, and furthermore. WHAT IS OPPOSED TO THE PARISH PRIEST. However, from the part of the Chapter, it must be considered that no right belongs to the Parish Priest, during his absence from the choir, due to preaching and attending to the spiritual welfare of the faithful, concerning the daily distributions; since it is a common principle in law, that daily distributions are due only to those who are truly present at divine services, and not to those who are absent, or who reside there by interpretation of the law. C. De cetero de Cler. non resi

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d. On this matter, the most venerable decree of Boniface VIII in Chapter 1, concerning Clerics who do not reside there, is: "We decree that the very daily distributions, in whatever things they consist, to the Canons and other Beneficiaries of the same Church, who are present, should be granted." This decree of Boniface VIII is to be followed as a certain and unchangeable rule in the distribution of...

[*Latin ed. p. 108*]

108 Concerning the receiving of distributions, notwithstanding any statutes or contrary customs, the Council of Trent, Session 24, Chapter 15, concerning ecclesiastical revenues, decreed as follows: "Those who have been present at the appointed hours shall receive the distributions; but others, without any collusion or remission, shall be deprived of them." Consequently, not only is presence required to receive these distributions, but also physical presence in the choir. This is affirmed in *Rota part.* 5, volume 1, decision 22, number 14, in the annotations to decision 576, numbers 112 and following, and numbers 129 and following, in volume 3, part 4, and in decision 449, number 7, part 14. For, according to the unanimous opinion of the Doctors and the practice of the Sacred Congregation, distributions are due to clerics by reason of their service, and not in respect of their title; nor are they given as to a canon, but as to one who serves in divine offices, as decreed by Benedict XIV, Institutiones, 107, number 58; Piton, Disputationes Eccl., 1, number 36; *Rota dec.* 689, number 7, part recen. Furthermore, a parish priest cannot exempt himself from this legal provision on the grounds of preaching and the care of souls; for even if there is a legitimate reason, he seems never to be able to receive the daily distributions. It is known that the reasons prescribed by law, which excuse one from residence, are not sufficient to obtain these distributions. Moreover, the just causes for absence, which are prescribed by law for receiving distributions, are stated in the following words in the chapter concerning non-resident clergy: "excepting those whom infirmity, or a just and reasonable bodily necessity, or evident benefit to the Church, excuses." And these exceptions were confirmed by the Council of Trent. However, the reasons presented by the parish priest cannot be included among the causes prescribed by law; therefore, they are not valid in his favor. Furthermore, the custom to which the parish priest appeals is of no avail; for the Council of Trent, in renewing the law promulgated by Boniface VIII in the chapter *Consuetudines*, condemns as unreasonable customs for receiving distributions during absence from the choir. It is not permissible to establish a custom contrary to the decrees of the Council of Trent, because of a nullifying clause added by Pius IV in the Bull *In principis Apostolorum*, as is widely taught by the Sacred Congregation

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and the Doctors.

[*Latin ed. p. 109*]

DISTRIBUTIONS. 109. As Fagnanus states principally in chapter "Licet de Praebendis," number 77, and Pignatelli, volume 9, consult, 125, number 2. Assuming that the parish priest, as if present in the choir, is not to be considered for the purpose of receiving distributions, even if he is occupied with preaching and other parochial duties; it seems even more necessary to hold the same regarding choral chaplains to whom the care of souls is not entrusted primarily, but as an aid to the parish priest. With these premises established, it is necessary to explain the following: I) Whether the parish priest and his assistants should be considered as present in the choir for the purpose of receiving distributions, both for the time before and after the sermons, and for the time when the state of souls is being assessed in the case.

RESOLUTION. The Sacred Congregation, after deliberation, approved the following response on January 28, 1882: "Affirmatively, inasmuch as the office of the parish priest and the duty of the cooperator are inherent to the choral chaplains, with their consciences burdened by this."

FROM WHICH WE GATHER:

I. That to those who hold a position within the chapter, to whom the care of souls is entrusted, daily distributions should be given, if they perform parochial duties at the appointed time.

II. And this also follows from the Council of Trent, Session 22, chapter 3: "that if any of the aforementioned dignitaries... have the care of souls entrusted to them... then for the time that they reside and minister in the parish, they should be considered as present, and should participate in the divine services in cathedrals or collegiate churches."

III. Furthermore, the Sacred Congregation has declared on several occasions that a canon who has the care of souls, even if he does not participate in the divine services, is to receive daily distributions, if, at the time when the divine services are celebrated, he hears confessions or performs other duties pertaining to the care of souls.

[*Latin ed. p. 110*]

110. IV. Concerning Distributions: It is not surprising that the parish priest should be considered present in the choir, when he perfects the state of souls, or explains the Gospel; for, according to divine precept, he ought to know his sheep, offer sacrifice for them, and feed them with the word of divine preaching and the example of all good works.

V. The same can be said of coadjutors: There is no doubt that, when the parish priest is absent or hindered by illness, they fulfill his office; and

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therefore, where the reason is the same, the same arrangement of the law should apply.

VI. Hence, in this matter, to the extent that the office of the parish priest and the duty of the coadjutor truly pertain to the choral services, the parish priest and his coadjutors are considered present for the purpose of receiving distributions when they perfect the state of souls, and for the purpose of delivering sermons to the people, both before and after.

VII. However, since it cannot be determined how often those who are concerned with the care of souls may be able to receive distributions, even when absent from the choir, due to a legitimate cause, the Sacred Congregation often adds – with a view to their conscience – that they may use this privilege on those days and hours in which the good of souls calls them elsewhere by a strict necessity.

(1) Those who are considered present in the choir by a legal fiction. Furthermore, those who are considered present in the choir by a legal fiction, whether due to a legitimate cause or because they have been granted an indulgence, receive all distributions, except for those for whom the will of the testator or benefactor prohibits it, which, as the venerable law is considered, resolves that those who are physically absent must be deprived of the distributions, according to Bene. Dict. X.I.V. Inst. The Sacred Congregation, in a decree dated April 18, 1511, resolved this matter (107), in which it states this.

[*Latin ed. p. 111*]

IN GRANADA, AND MINDONIEN. A REQUEST CONCERNING STIPENDS FOR THE EXECUTION OF APOSTOLIC DISPENSATIONS. Dated January 28, 1882. In the month of August of the year 1870, the Most Reverend Bishop of Granada presented the following request to the Sacred Congregation of the Council: "Regarding all dispensations which are granted by the Apostolic See concerning impediments to marriage, His Holiness gravely imposes the following upon the Official: With your discretion... by these presents, we entrust and command that you, having set aside all hope of any benefit or reward, even those offered spontaneously, from which you must entirely abstain, be warned... concerning the foregoing, you must diligently inform yourself. We wish, however, that if, despite our warning, you should presume to demand or receive any benefit or reward on the occasion of the aforementioned dispensation, you shall incur excommunication *latae sententiae*... This excommunication is reserved to the Supreme Pontiff in dispensations granted *in forma pauperum*, and nevertheless, the dispensation then performed by the official is declared to have no validity or force whatsoever. Although it is clear that no official can demand or receive any benefit or reward, even one offered spontaneously, for the execution of Apostolic Dispensations, and this has been declared by this Sacred Congregation of

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the Council among several approved authors, declaring and condemning any such custom as contrary, even reprehensible, and an abuse, so that no one can defend it; nevertheless, this custom has prevailed so much in these regions that no Episcopal Curia can be found, almost throughout all of Spain, in which the official does not receive some form of COMPENDIUM [payment].

[*Latin ed. p. 112*]

"The duties, rewards, or stipends pertaining to dispensations apostolicæ are not usually received, but rather paid out. Officials defend this practice, as I believe, on the grounds of a universal and venerable custom, on account of the labor they expend in studying the process and examining witnesses, and because the salary assigned by the Bishop or by the Church is, for the most part, not sufficient, nor can it be, given the current diminished ecclesiastical revenues, and finally, because some are supported by the authority of certain not entirely unknown writings.

Therefore, since the matter at hand is of the utmost importance, both to consider the consciences of all former officials, and especially to ensure that all dispensations, particularly those expedited for the poor, are carried out to this day without impediment by the officials, and that the validity of marriages subsequently celebrated is likewise ensured, I implore Holiness to deign to declare by a general decree whether the aforementioned custom can be tolerated for the reasons given, and whether officials can, with a safe conscience, receive any reward or stipend for the execution of apostolic dispensations, notwithstanding the aforementioned clauses of the Apostolic Letters. This, in these most grievous circumstances, in which officials receive almost no other emoluments, except those received for the execution of apostolic dispensations, seems to be benevolently permissible.

If, however, it seems necessary to answer this question in the negative, I again implore Holiness to deign to provide a suitable remedy for such great evils.

With these matters received and all concerning the discipline of the Sacred Congregation concluded, the cause was concluded in the plenary assembly on June 22, 1871, and the following questions were proposed: - Whether and how the custom can be tolerated in this case. - And, in the negative, - Whether and how one should proceed in this case - and the following response was given: - postponed and in accordance with the opinion of the Secretary. In the year 1880, the Bishop of Mindonensis again raised this question, so that at last, something would be decided concerning it."

[*Latin ed. p. 113*]

Regarding the controversy concerning Apostolic dispensations, let us seek a resolution. Upon receiving this letter, since the most powerful reason

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for granting special privileges seemed to lie in the alleged custom, it did not appear to be the case that the current practice in the Tribunal of the Cardinal, Vicar of this most holy City, was entirely different; and simultaneously, the Apostolic Nuncio in the Iberian Peninsula was requested to report whether the asserted custom was truly universal. A similar investigation was also undertaken through the agency of the Sacred Congregation for the Propagation of the Faith in several dioceses of America. The Vicar of the City reported that, in his diocese, the executors of dispensations do not, from time immemorial, receive any payment for impediments to marriage. However, the officials always receive, and continue to receive, some form of compensation or reward; but the reason and title for this receipt is the labor expended in carrying out the process, in examining witnesses, and in drafting the executive decree. As for Spain, almost all the prelates of that kingdom, with a unanimous voice, asserted that the custom in question is universal and memorable, except for the fact that the Episcopal Curias differ in the calculation of taxes, and in the persons who receive them: for in some places, even the Vicars General participate in them, while in others they are excluded. On the other hand, a different custom is found in regions of America, as is evident from the data provided by the Sacred Congregation of Rites, through the agency of the Sacred Congregation for the Propagation of the Faith. There, the Episcopal Curias either receive nothing at all, or, if they receive something, it is rarely granted by the favor of the Chancellor's office, but is either used to pay the expenses of the Chancery, or is spent as alms for a pious work. The Synodal Discussion: THE CUSTOM APPEARS TO BE CENSURABLE. First of all, it seems impossible to doubt that the words in the Apostolic Letters convey a true precept. Indeed, when the Pope, considering the case in which an executor, having disregarded the warning, presumes to receive or demand some form of payment or fee, incurs the penalty of excommunication by this very act, and if this concerns dispensations granted *in forma pauperum* (in the manner of the poor), *Acta, Tom. XV. fol. OLXXI.*

[*Latin ed. p. 114*]

114 OF APOSTOLIC DISPENSATIONS? The dispensation itself is invalidated. Indeed, all these things clearly demonstrate the firm will of the Supreme Prince, who commands something, as stated in *De Iustis*, on dispensations, book 1, chapter 6. To these, add that the word "as far as" implies a condition from which the delegate is in no way permitted to deviate, as stated by Gratian in the *Disputatio Forensis*, chapter 854, number 40 and number 49. *Rota*, decisions, 38th part, preliminary, diverse, number 2. Papal decree of Leo in *Praxis*, section on penitentials, preliminary. Furthermore, it should not be overlooked that the authors have not considered it a matter of great importance that a distinction exists between benefits and the stipend corresponding to the work performed. While these authors,

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through the aforementioned Apostolic Letters, prohibit benefits or large rewards, they cannot persuade themselves that even small stipends or gifts are prohibited. This opinion is held by Sánchez, in *De Matrimonii*, book 8, dispensation 35, number 10; Filuccius, *Quaestionum Moralium*, volume 1, treatise 10, paragraph 2, chapter 10, number 363; Antoninus, *Diana*, part 8, treatise 3, resolution 1; John Guttiez, *De Matrimonii*, chapter 128, number 2; Pignatelli, *Consultationum Canonicarum*, 17, number 6, volume 8. Nevertheless, the most serious authors, and especially Navarrus, in *Liber Tertius*, consultation, final, on rescripts, after presenting the distinction, maintain that these clauses not only prohibit those who execute dispensations, whether they be Bishops or Vicars General, from receiving remuneratory rewards, but also from demanding stipends and gifts under the title of work, service, or decree. And this opinion has been considered to prevail. Indeed, Garcia, in *De Beneficiis*, part 1, chapter 1, number 77; Sbrotius, *De Officio Vicarii*, book 2, question 36, number 7 and following; Zeral, in *Praxis Episcopalis*, part 1, under "dispensation," section 1; Conrad, *Praxis Dispensatoris*, book 7, chapter 6, number 232 and following; *Thesaurus de Poenis Ecclesiae*, part 2, chapter 14, throughout; Genuen, in *Praxis*, chapter 15, number 13; Fagnan, number 5; Peer, *Tractatus de Simonia*, in Odoardo, number 32 and following, have followed this opinion. Furthermore, we are taught by the most recent Innocentian canon that this must be carefully considered. It does not matter that some authors have doubted whether this provision also has legal force outside of Diana Veteranorum.

[*Latin ed. p. 115*]

DISPENSATIONS APOSTOLIC 115, which is written in the Italian language, as Cardinal Petra states in *Constitutiones Apostolicae*, volume 1, preface, § 3, number 32, citing the decree of Innocent, dated May 2, 1699. Giraldus, *Jus Pontificium*, Part II, section 53, and other resolutions of the Sacred Congregation of the Council are also cited. It must be maintained that the authority of the author is certain, wherever it is claimed. This is what the learned canon lawyers teach, and especially because it is an explanation of an already established law, rather than the establishment of a new law.

(1) Nor does custom invalidate this, as officials contend that they can defend their actions. Indeed, the prohibition of fees is repeatedly and expressly renewed each time the execution of the Apostolic Letters is carried out. Furthermore, the Supreme Pontiff always includes and repeats the aforementioned clause in all Letters of dispensation concerning marriage, in which fees or any kind of reward are prohibited. However, the contradiction of the Prince, as is well known in law, interrupts and nullifies any contrary custom, chapter end, concerning custom. Indeed, the Pope reinforces his prohibition with the threat of censure, and repeats it twice in

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each Letter. Truly, repeated words indicate the firm will of the one granting the dispensation; Caevallos, *Quaestionum Communium*, question 828, number 73; Marius Antonius, *Variarum Resolutionum*, book 1, resolution 3, number 7, in the response of Maranta, response 19, number 29, part 1; Gratian, *Discipuli Forensis*, chapter 621, number 29, volume 4; Achilles de Grassis, *Decisiones*, 13, also 3, concerning the rule modifying the Indulgences of Cardinals, number 4. Repeated words always effect something beyond the literal meaning; Quintilian, *Institutiones Oratoriae*, book 6, chapter 2, number 3. Fontanella, *De Pactis Nuptiarum*, clause 5, *Glossa*, paragraph 8, number 26. Moreover, they completely exclude any doubt, as Her. Palma states, *Consilia*, 86, number 9. Furthermore, this opinion receives confirmation from the custom, as evidenced by the document entitled "Doubts concerning the execution of dispensations for marriage," which was read on December 16, 1786. In it, after certain observations made ex officio, the following doubts were raised: "I. Is it permissible for a General Vicar..." (1) See Ferraris, *Bibliotheca V. Taxa*.

[*Latin ed. p. 116*]

116. The office of Apostolic dispensations, or the stipend thereof, may even receive a small sum for subscription, and for the seal, or for any other reason, and by title in the execution of Apostolic dispensations concerning marriage. In the case of *IL An*, in which and how there is place for restitution? On January 20, 1767, a resolution was issued: "To the first, negatively. To the second, to the Most Reverend Secretary, with the Most Holy [Father], for absolution and condonation." THE CUSTOM SEEMS TO BE TO BE MAINTAINED. However, if, as it seems possible, the diocese and kingdom concerning which the matter is mentioned belong to Spain, let the Fathers consider whether the current, and worsened, economic condition of those curias merits some consideration. Furthermore, it must be considered that the custom of which we speak seems to hold great weight: for it is not only observed in the Diocese of Granada, but throughout almost the entire kingdom of Spain, and elsewhere outside of Spain; indeed, in this very city, it has flourished from time immemorial, and it seems very harsh to impute such grave ignorance or wickedness to so many virtuous men. Therefore, it is necessary to note that the authority of a long-standing custom is not inconsiderable, as is expressed in Leg. 2, C. which speaks of a long-standing custom, and Cap. fin. concerning custom, it is to be observed that if the custom cannot be admitted as abrogating the law, nevertheless, in a presumptive and interpretative sense, it may perhaps not be disregarded, especially when there are grave and extraordinary circumstances of time and things, so that no one of sound mind would doubt that the Supreme Pontiff, knowing these things, would not have hindered the officials from the aforementioned prohibition. All the more so, because we are speaking of officials, to whom the Bishops, considering the most grievous condition

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of Spain, cannot, on the one hand, assign honest sustenance; and on the other hand, all things cry out that someone should support them, for whose benefit they labor. Indeed, Boniface VII, who forbade delegated duties to judges, prudently decreed that in the future, only those who were provided with a suitable benefice should be delegated, cap. ii de re-

[*Latin ed. p. 117*]

In the writings of the Apostolic Dispensations, book iii, section VI, it is stated that he did not wish to extend his prohibition to the case in which it would be necessary to delegate ecclesiastical officials for a suitable benefit, not for visible reasons. Nor was this the intention of the Fathers of the Council of Trent, in session 25, chapter 10, concerning reform. Furthermore, the stipend that officials receive is so small that it does not at all correspond to the labor expended in conducting the process, and therefore it does not conflict with the purpose for which the Pontiff prohibits fees: namely, that a judge, corrupted by fees, may not perform his office with less diligence. For judges can be corrupted by the generosity of fees, but not by a bare and meager stipend, which is granted not out of the giver's generosity, but out of necessity, as Sánchez de matrimonio, book 8, section 35, paragraph 10 and following, states. Moreover, in the proposal put forward by the present Archbishop, a threat of excommunication *latae sententiae* is made. It is worth noting that this same excommunication still appears to retain its force, even though it was not expressly named in the Apostolic Letters of October 6, 1869, beginning with the words "Apostolicae Sedis." For there, the matter concerns censures issued by common law and by Apostolic Constitutions in general, and not at all concerning censures established by special law by the Supreme Pontiff; which seems to be confirmed by the argument presented in the final article concerning interdicts *latae sententiae* reserved, number 2, §. And indeed, those censures which are excluded from the sanction of that Constitution are those imposed for pious associations and places, and therefore all the more so for particular individuals. (1) With these premises established, the following question was to be considered: I. Whether and how such a custom can be tolerated in this case. And II. Whether and how one should proceed in this case. RESOLUTION. After having considered the matter, the Sacred Congregation decided to respond as follows: To I. Regarding executors, negatively in all cases. (1) You have this Constitution in Volume V, page 287.

[*Latin ed. p. 118*]

REGARDING APOSTOLIC DISPENSATIONS

Concerning II. It is to be considered that, for the healing of the root of dispensations and marriages which suffer from the vice of nullity, and for absolution by way of precaution and remission concerning executors.

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FROM WHICH THE FOLLOWING MAY BE GATHERED:

I. He incurs excommunication *latae sententiae* (which appears to remain in full force even after the Constitution of the Apostolic See), the official who presumes to receive or demand any fee or payment for the execution of Apostolic dispensations.

II. However, in dispensations, those expedited in the form for the poor, such excommunication is reserved to the Supreme Pontiff, and the dispensation, performed with this vice, is declared to have no validity or force.

III. Consequently, no marriage is valid, for which a dispensation has been granted in the form for the poor, whenever officials have demanded or received any fees or rewards for that dispensation.

IV. The words of the Apostolic Letters, adding the excommunication incurred by the very act, and invalidating the dispensation itself, when expedited in the form for the poor, sufficiently indicate the true precept, and the firm will of the Prince who commands it.

V. Since the Prince's prohibition against receiving or demanding anything is repeated as often as the execution of the Apostolic Letters is carried out, therefore, by law, no contrary custom can begin, to which the actions of officials who receive something can be attached and defended.

VI. Furthermore, the well-known Innocentian tax prescribes that the Bishop, his general vicar, and any of his officials, must receive nothing, even under the guise of a gift, in the execution of Apostolic dispensations in matrimonial cases.

[*Latin ed. p. 119*]

On the Matter of Renunciation and Excardination: On March 18, 1881, Nicholas, the Penitentiary, presented a humble petition to the Most Holy Prince, explaining that he had been suffering from ill health for a long time due to the harsh climate and conditions; therefore, he freely and voluntarily renounced his canonry, imploring the benevolence of his Holiness to accept this renunciation and deign to grant him the grace of excardination, so that, with a view to his own well-being, he might be able to render some service to the Church in another Diocese, where he might enjoy a more favorable climate and be able to thrive. He further stated that he was requesting this excardination also in order to consult his own conscience and personal security, and because his ministry, due to external circumstances, had become ineffective without his fault. The Bishop, when asked, stated that such petitions should be entirely rejected, since they do not have valid reasons. For if the orator is hindered in performing the duties of the Penitentiary office, which he has thus far performed commendably, I do not know how he can seek to flee to a more favorable climate in which he grew up and lived well for so many years. Furthermore, his personal security does not allow for such a distinction. For who would plot against a peaceful man,

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who is pleasing to no one, and who is of the most esteemed character and morals? The Chapter, however, decided that the orator could not renounce his canonry, because the sacred canons forbid it, and especially the Bull of St. Pius V. What a detriment to the Church of God. Furthermore, the Bull does not allow the canonry itself to be relinquished or resigned, unless after a three-year residence, which the orator has not yet completed.

SUMMARY OF THE FACTS.

[*Latin ed. p. 120*]

420. DISCUSSION ON RENUNCIATION AND ECCLESIASTICAL REMOVAL: A SYNOPTIC VIEW. PRAYERS TO BE OFFERED BY THE CANON. It seems that a Canon can indeed renounce his canonry, and this should not be doubted, for everyone can renounce their own rights. Moreover, this is the case because a just and legitimate reason intervenes. Ferraris, under the word "resignation," number 11, states: "Every cleric who holds a benefice can, speaking regularly, renounce his benefice, which he holds, in the hands of his legitimate superior," as is stated in the common text in chapter 4, title 10, on resignation; chapter 1 of the same, number 6. Neither the Bull of Pius V nor the Bull of the Canonry granted by the Most Reverend Chapter are relevant, because they are not considered to apply in this case, given the presence of a most just and legitimate reason. Indeed, the cleric, besides other serious inconveniences that completely overwhelm him, suffers from a hernia, according to the opinion of physicians. Having renounced his canonry, permission for ecclesiastical removal seems to be warranted. For in this way, he is no longer bound by the laws of residence, and therefore regains the freedom to establish his domicile wherever he wishes. Furthermore, it is not possible for a cleric to abandon the Church to which he was attached by the very force of his ordination without the express consent of the Bishop. For in this case, besides the fact that the Bishop's dissent could be considered unjust and unreasonable, and therefore not to be heeded, it would be most important to consider that the force and distinction of the precepts must be maintained, so that natural law never prevails over positive ecclesiastical law. Moreover, the law that binds the cleric arises only from the mere precept of the Church, and therefore from a positive human decree; whereas the preservation of health, as well as life itself, are commended and prescribed by natural institutions and laws. Furthermore, it is well known in law that the Holy Church, as a most loving mother, treats those afflicted by illness with the utmost humanity and piety, even granting them permission to be excused from the choir.

[*Latin ed. p. 121*]

RENUNCIATION AND EXCARDIATION 121. But also, he should

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never refuse permission to be absent from his residence, either for a time or permanently, as necessity demands; and that such a natural equity cannot be hindered by the opposition of canons, or others who may have an interest, which, when proven to be based on infirmity, or a legitimate impediment to residence, is considered unjust and unreasonable, as is testified by the resolution in Piacenza (Indulgences, December 6, 1760), in Prato (regarding calling to the choir, June 23, 1764), and in Caserta (regarding indulgences for absence, December 16, 1797). Indeed, the benignity and humanity of this Holy Mother Church towards the sick have extended to the point that even to parish priests, such permissions are not refused, as has happened in Tarragona (residence, March 24, 1736); moreover, its justice does not permit that those who have contracted a disease and are unable to serve or reside should be forced to resign their benefice, but neither does it require that they be compelled to serve or reside through a substitute, as the Sacred Congregation declared in the aforementioned Prato (June 23, 1764). Furthermore, if the Holy Church pursues those afflicted with illness with such piety, that it not only does not deprive them of a benefice, but even desires that they enjoy the fruits and daily distributions, how much more should it pursue with love and benevolence those who renounce a benefice, so that the divine worship may suffer no detriment; and who seek nothing other than to fulfill the law by which they are bound, namely, to be ordained, or to be excardinated from their own diocese, in order to enjoy a milder climate for the sake of their own health, and to render some service to the Church? Since these things are so, the reasons presented by the Bishop and the Chapter before the Most Reverend Fathers seem to lack a solid foundation, considering the not insignificant infirmity with which Nicholas is said to suffer, according to the testimony of physicians. It must be seriously considered that the precepts of the Church do not lead to a grave inconvenience, when natural equity demands that affliction should not be added to affliction. With these things noted, the question was raised by the Most Reverend Fathers as to how the canonical petitions of Nicholas should be decided.

[*Latin ed. p. 122*]

122. RESOLUTION REGARDING RENUNCIATION AND ECCLESIASTICAL REMOVAL. The Sacred Congregation, after deliberation, responded on March 18, 1882: For the grace requested, let the matter be acted upon and notified to the ministers of the Apostolic Datary. (1) FROM WHICH WE GATHER THE FOLLOWING: I. According to the Constitution of St. Pius V, the Holy See can receive and admit the renunciations of those bishops who are either weakened by age, or hindered or impaired in body, or subject to crimes, or subject to ecclesiastical censures. II. Hence, according to the law of the Church, or positive human law, no renunciations can be made without a legitimate cause by anyone. III.

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Among other things, bodily weakness or infirmity is to be considered a legitimate cause; in which case, human law must yield to natural law, which commands the preservation of health and life itself. IV. Therefore, there is nothing surprising in the fact that the renunciation of the canonry was accepted, so that the divine worship would not suffer; for with such piety, the Mother Church cares for those suffering from illness, allowing them to enjoy the revenues of their benefices, even if they are unable to bear the burdens. (1) Legitimate causes for accepting the renunciation of a bishop. After the matter was concluded, the Sacred Congregation issued a communication to Nicholas, informing the Apostolic Datary of the matter. The Sacred Congregation sent the matter to the ministers of the Apostolic Datary, so that they might see whether the requested grace could be granted; or so that they might judge whether the legitimate causes were present so that the same could safely declare their penitential resolution to be valid.

[*Latin ed. p. 123*]

123. CHAPTER MEETINGS. On March 18, 1882. Through a summary of prayers, a COMPENDIUM OF FACTS. According to the ancient custom in the Cathedral of Trent, in addition to the Canons, who numbered twenty-two, forty-four priests of said Church, designated as Participants, attended the Chapter sessions, and all exercised the right to vote. However, because of this great inequality between the number of Canons and Participants, disagreements and disputes frequently arose. Therefore, Pope Benedict XIII, at the request of the Canons, decreed that in matters of jurisdictional authority within the Chapter, only the Canons should cast votes for the passage of decrees; while in matters concerning the common fund and daily distributions, only twenty-two of the Participants, those most senior, should vote. Pope Clement XII, confirming this arrangement in the year 1736, ratified a certain agreement between the Canons and the Participants, which has remained in force until now. However, since the actual number of Canons in Cathedral Churches has now been reduced to only twelve, the aforementioned Chapter, having offered a petition, approached the Most Holy Prince on June 24 of this year, imploring him to likewise reduce the number of Participants who could attend the Chapter sessions to twelve, and to, with the fullness of his power, remedy the improperly held general assemblies due to the disparity of votes.

A SYNOPTIC DISCUSSION: WHAT FAVORS THE CHAPTER. It seems that the prayers of the Chapter should undoubtedly be received with benevolent favor, since the same reason that moved the mind of Pope Benedict XIII in the year 1730 is present now.

[*Latin ed. p. 124*]

124. CHAPTER MEETINGS, concerning the number of participants who

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held a place in the chapter sessions. Furthermore, it is evident from the Brief of Clement XII in the year 1736, by which the Decree of Benedict XIII was confirmed, that the principal reason for this kind of reduction stemmed from frequent disagreements arising among the Canons participating. Therefore, if at that time, that inequality of votes, being the origin and source of all discord, was removed in order to restore peace, it seems that the same should be done now: for where the reason is the same, it is fitting that the same rule of law should be observed, lest the lesser be preferred to the greater. And rightly so, since it seems exceedingly unjust that Canons, who, according to the tradition established by the Bohemians, as stated in the decree, book 2, title 11, § 7, are present only in the name of the Chapter, which constitutes the Bishop's senate, and which possess some share in the governance of the diocese, should be entirely subject to the will of the participants in the chapter sessions. Moreover, if the Supreme Pontiff Clement XII in the aforementioned Brief considered it intolerable and called it an abuse that forty-four Presbyters, together with twenty-two Canons, should cast votes; the same should be considered in the present case, in which twelve Canons cast votes, while twenty-two participants are counted. It cannot be inferred from this, as the participants contend, that the law of the government, by which the number of Cathedral Canons is reduced to twelve, is recognized by the Church. Just as the Church frequently mitigates the service of the choir due to the reduced number of Canons, without, however, being able to be accused of ratifying the law of the government; so too, it seems that the Church can remove this abuse, both for the dignity of the Canons and to eliminate discord, and re-establish the equality of votes, without being accused of agreeing with civil laws.

WHAT FAVORS THE PARTICIPANTS. On the other hand, the participants, resisting the reduction desired by the Canons, argue:

[*Latin ed. p. 125*]

COETUS CAPITULARES 125. This [matter] arises from a twofold cause; for, indeed, a transaction between the Canons and the Participants, initiated with Pontifical sanction, is to be upheld, because not only is it detrimental to the rights of the parties, but also harmful to the Church itself, since, moreover, no legitimate reason demands such a reduction. Regarding the first reason, it is alleged that it has been established that, on November 16, 1735, the Canons and Participants entered into an agreement by mutual consent, whereby it was stipulated, among other things, that 22 Participants, together with 22 Canons, should cast votes whenever matters and affairs pertaining to the common Mass and distributions were discussed. Furthermore, it is contended that this agreement or concord was confirmed by Clement XI through an Apostolic letter in the form of a Brief, in which the following words are found: "We...confirm and approve, with all and each of the clauses and conditions contained and expressed therein, the

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aforementioned agreement, or transaction, and we add to it perpetual and irrefragable Apostolic force, validity, and efficacy." Given these established facts, it is clear in law that agreements and conventions are to be observed scrupulously. For nothing is more in accord with human faith than that agreements should be kept, as stated in L. 1/f. de Paci, Cap. 12, in the same title, rule XXI of the law, in 6 - ibid -: "What has been agreed upon together, cannot subsequently be disagreed upon." And it is not surprising, since the efficacy of a transaction is such that it is equivalent to a judgment, and has the force of a res judicata, as stated in L. Non minorem 20 C. 4 tit. 2, Cap. 5, and it puts an end to uncertain matters and disputes, as stated in L. Fratris IO C. eod. 3. Therefore, the law teaches that a transaction, once begun in good faith and legitimately, cannot be revoked or rescinded by one of the parties, as stated in 5 Cod. de obligat. et nat. - ibid -: "Just as, at the beginning, the power to have or not to have a contract is free to each, so also, after the contract has been concluded, the power to rescind it is not free to either party."

[*Latin ed. p. 126*]

126 COETUS CAPITULARES » "Nemo potest obligationem semel constitutam, adversario non consenti ente, rescindere." L. 5 Cod. de Transad. L. Postquam. Uti 4 Cod. de Pactis. Immo, talis transactio, ne quidem interveniente Rescripto Principis, revocari valet, textu expresso in Leg. Caus. 16 Cod. de Trans. - ibi "Causas, vel lites transactionibus legitimis finitas, imperiali rescripto resuscitari non oportet." Arguunt vero Participantes sibi obvenire posse damnum ex petita votantium diminutione: eo quod iam suspicio enata sit de mala alicuius partis reditus profusione. Damnum autem ipsi Ecclesiae obveniret, quia ex dicta imminutione deesse posset qui varia officia implere valeret. Nam aliqua munera pro animarum cura, pro servitio chorali, et pro administratione nonnullorum Capituli fundorum participantibus magis antianis committuntur cum aliquo emolumento. Tandem urgent Canonicorum preces respuendas esse ex altero capite, quia nempe nulla adest pretiosa ratio, quae huiusmodi reductionem faciendam esse suadeat. Etenim ex quo Capitulum, vi legum civilium, amisit suum patrimonium, omni administratione de facto privatum fuit. Hinc coetibus capitularibus negocia oeconomiae tractanda amplius non sunt. Et ideo nullum Canonicis immineret discrimen ex praevalentia votorum Cleri. Constito itaque, quod preces a Canonicis porrectae, concordiae a Sacratissimo Principe confirmatae, adversantur; constito quod iurium laesivae, et Participantibus aeque ac Ecclesiae praeiudiciales sint; constito tandem quod qualibet causa destitutae sint, eas ab ipso iudicii limine repellendas esse, Participantes concludunt. Hisce praenotatis, quaesitum est, an Canonicorum essent excipiendae preces, vel annuendum Participantibus. RESOLUTIO. Sacra C. C. re cognita, sub die 18 Martii 1882 respondere censuit: Praesentibus perdurantibus circumstantiis, tot participantes, magis antianos, in-

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tersint coetibus capitularibus, quot dignitates et Canonici Capituli legitime adnume-

[*Latin ed. p. 127*]

CHAPTER MEETINGS 127 are held, even though the number exceeds the stated dozen; however, the offices and emoluments are equally distributed among the twenty-two members: and consideration must be given to the Most Reverend [Bishop], for the sake of caution, regarding what has transpired in the past.

AT THE CHAPTER MEETING. On Tuesday, the 18th of [Month], 1882. The Archpriest of the Minor Cathedral presented [it] to the Most Reverend [Bishop]; Pope Paul III, through a Bull, established the dignity of the Minor Cathedral, called the Archpriestship of the Minor Cathedral, of which the present speaker is now invested. This dignity was granted all and singular privileges, all honors and prerogatives, with which other dignities are endowed by law or custom, or otherwise. Among these, the Pope decreed that the Archpriest of the Minor Cathedral should have a stall in the choir, on the left side, and a place in the Chapter. Due to the vicissitudes that occurred at the end of the century, the Archpriestship was extinguished. However, in the year 1835, it was restored to its former state. This benefice comes from the patrimony of the priest Anthony, who, establishing a dowry, reserved the patronage for himself, his brothers, and their descendants. With this restoration, undoubtedly all the ancient privileges were recovered, and as is stated in the Bull of restoration by Gregory XVI: "We command that the Archpriestship of the Minor Cathedral, which in the same Chapter is a new dignity after the Pontifical dignity, be restored to its former state, rank, and honor... so that he may be recognized and considered by all as a true and undoubted dignitary perpetually."

SUMMARY OF FACTS.

[*Latin ed. p. 128*]

128. IN THE CHAPTER: Concerning this matter, there is no room for doubt that the Archpriest Minor has recovered, besides other things, a voice in the chapter. However, the Capitulars object to this, alleging that this right should be granted only to those who have distinct revenues and are particular lay patrons.

DEFENSE OF THE ARCHPRIEST MINOR: The defender of this party states: "It is a well-known principle of law that, from election or reception into a brotherhood or canonry, canonical rights are acquired, which grant a stall in the choir and a voice in the chapter." Pirring, book 3, title 5, section 2, number 1. Reiffenstuel, book 3, title 5, concerning prebends and dignities, numbers 57 and 58. A canonry (commonly called a "canonicatus") is a

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spiritual right, which arises from election or reception into a brotherhood or canonry. Thus, Innocent, in the chapter, etc. For if someone is simply received as a canon, before canonical revenues are assigned or conferred upon him, he is said to have a canonry, that is, a "canonicatus," but not yet a prebend. Indeed, a prebend further implies the right to receive the annual fruits of the canonry, or debts arising from the canonical title. Therefore, he who has both is called a canon with a prebend. Canon. Sanctorum, distinction 70. Furthermore, that spiritual right which a canonry confers consists primarily in the right to have a seat (commonly called a "stall") in the choir and a voice in the chapter. To this, Ceccoperi, chapter 11, number 18, and Barbos, concerning canonries and dignities, chapter 11, agree. Pignatelli, consult. 18, numbers 8 and 9, title 6, and the Sacred Congregation, especially in Romana, concerning the precedence, rights, and emoluments of canonries, of February 18, 1865, § 1. Indeed, from the documents it is clear that the Archpriests Minor, after being elected, not only obtained possession in the chapter, but were also received by the canons with the kiss of peace, as brothers or canons. Therefore, the Orator concludes, the Archpriest Minor has truly acquired the rights of a canonry, and therefore, a stall in the...

[*Latin ed. p. 129*]

In Chapter i, paragraph 29, it was stated that they were present in the chapter, and that their voice was heard in the chapter, and therefore, truly and properly, they are canons. This is so true that the Minor Archpriests should wear the same vestments in the choir as the other canons, participate in the distributions, and even bear the burden of the conventual Mass in turn, as do the other canons. Furthermore, the fact that only I, and only I, have undertaken the entire burden of this Mass is sufficient to demonstrate that the Minor Archpriests are truly and properly canons, as taught by the oracle of the Sacred Rota in decision 380, number 8, page 11: "The institution of the Church of Turnus does not fall among the canons." To this, De Luca concurs in Discursus 1, number 6, on canons, and chapter. When a new canonry was established, the chapter was convened, so that the dignity of Minor Archpriest could be attached to it; moreover, Pope Gregory XVI added that a new canon should contribute a certain sum of money to the Mass distribution, so that he could participate in it. Therefore, not only the chapter, but also the episcopal court, considered the Minor Archpriest to be a true canon; however, a fixed stall was not granted to him, so as not to infringe upon the rights of other canons who had possessed the canonry before him. Therefore, it cannot be objected that the original institution was not such that they could be denied a voice in the chapter. Furthermore, the advocate argued that it is proper for the Minor Archpriests to have a voice in the chapter, even if a canonry is attached to the dignity. Indeed, it is true that formerly, according to the ancient sanction of common law, the

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chapter was composed only of canons, so that only they, as members of the same chapter, had the right to vote on matters pertaining to the proper governance of the Church; and although, in accordance with this arrangement, dignities among the members of the chapter were not counted, nor were they admitted to express their opinion in the acts of the chapter, except to obtain a stall in the choir, along with the right of precedence over the canons, according to the well-known teaching of Compostela, in chapter In. 4 on elections, Acts, Volume XV, page 671.

[*Latin ed. p. 130*]

130. In Chapter III, he states that, nevertheless, this kind of dignity has long since been separated from the chapter, and that today, three cases are excepted from this general rule. Thus, the Sacred Order of Canons in Guadalupe, in their election of April 3, 1841, states: "However, three cases are excepted from this general rule. The first is, if a canonical prebend is attached to the dignity; in that case, the dignity is considered to be of the chapter, and they have a voice in it. Gloss, in cap. Cum in verbo receperat de Constit, and there Felin, no. 18. Innocent, in cap. 2 in fine de instit. Abbas, in cap. Dilectus 19 de praebendis. And this holds true even if a prebend that is not truly canonical is attached, because, as it is considered to be a canon, it has a voice in the chapter as a canon, even though it is not a canon, as the text in cap. Dum in Eccles, de praebend, in 6, proves. The second case is, if in the very erection, the dignity was made to be of the chapter, with a stall in the choir and a voice in the chapter. Abbas, and Felin, in cap. Cum olim lib. 2 tit. de re iudicat. Barbos, de canonie, and Dignitat, cap. 37 n. 13. Rota coram Seraph, decisions 98, no. 1 and 2, and decisions 437, no. 9, and coram Bichio, decisions 203, no. 3. The third case is, if, either from the statutes of the Church, or from legitimate custom, dignities are considered to be of the chapter, or at least have been admitted by the observance itself to participate in chapter business, and have an active and passive voice in those matters, which, however, must be inferred from their participation in those acts that are proper to the chapter, namely, in establishing the statutes of the Church, in elections, in the transmission of possession to a new Bishop, and in other similar matters. Thus, commonly, Abbas, in cap. 3 de elect. Furthermore, the Advocate states that it has been established from the Bulls of Paul III and Gregory XVI, in the very erection, that this dignity was made to be of the chapter, since it obtained a stall in the choir and a voice in the chapter, and the obligation was imposed of fulfilling the choral service, as are the other canons. To this is added the general custom of almost all of Italy, that dignities are of the chapter, so that they are true canons. Moreover, such as...

[*Latin ed. p. 131*]

The custom of the minor archpriest having a voice in the chapter is unani-

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mously testified to throughout almost all of Italy, as evidenced by Cardinal De Luca in *Discourses* 46 on benefits, paragraphs 5 and 9; by Cardinal Petra in *Constitutions of Leo the Great*, volume 1, section In, paragraph 9; and by the officials of the Apostolic Datary in the case of Viterbo, concerning the execution of Apostolic letters in the year 1826. Furthermore, even setting aside these points, the advocate argues that the minor archpriest is entitled to a voice in the chapter, because, in addition to Episcopal decrees added to the synod, two Apostolic bulls explicitly granted him a voice in the chapter. Indeed, as we mentioned above, Paul III, in a bull whose beginning reads "Romanus Pontifex," states concerning the minor archpriest: "...he shall have a stall in the choir on the left side, and a place in the chapter, and in the acts of the same Church..." Gregory XVI, in the bull *Coelestem Agricolam*, states: "We command that... the minor archpriest... be restored and reinstated to his former state, rank, and honor perpetually." From these words, it necessarily follows that the Supreme Pontiff again granted, and word for word confirmed, to the new minor archpriest everything that was contained in the original concession of Paul III. Such is the force and power of reintegration, that it restores all things, and each individual right, as if they had never been taken away, as stated in *Sacram Rotam*, decision 19, page 1, volume 1, paragraph 9, number 9. The Supreme Pontiff Sixtus V fully restored them to their former state, by which they reassumed all their rights, as if they had never been taken away from them, as stated in the text on the law concerning deportations, chapter C, on passive sentences. With these points noted, and the other side presenting nothing, the following proposal was made to clarify the doubt: Whether and in which chapter meetings the minor archpriest has a voice.

RESOLUTION. The Sacred Congregation, on March 18, 1882, having considered the matter, decided to respond: Negatively, in all cases.

[*Latin ed. p. 132*]

132. VOICES IN CHAPTER. From which you may gather: That new canons, even if placed outside the chapter mass, cannot interfere in the particular affairs of the old canons of the first constitution, as has been decided on several occasions by the Most Holy Council. (1) (1) *Recole*, Vol. IV, page 177, and Vol. VII, page 684. MARRIAGE. On the days of September 20, 1879, and April 22, 1882. SUMMARY OF FACTS. In that most turbulent time when the island of Sicily was seized from the legitimate king by the leader Giuseppe Garibaldi, young men, fearing that they might be forced to take up arms, hastened to marry. For they knew that this leader compelled young men to serve for stipends, but, according to the laws then in force, those who were married were exempt from military service. Among those who preferred the yoke of marriage to the dictator's vexations was Salvator, of the Archdiocese of M., who, after the proper canonical announcements, on June 14, 1860, celebrated his

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marriage with Petronilla, a widow in her second marriage, the sister of his nephew, Stephen. It seems that no one suspected an impediment of the second degree of affinity, since the couple had lived together in the habit of conjugal life for about fifteen years. In the year 1875, Salvator, having become aware of this impediment, brought a complaint of the nullity of his marriage before the archiepiscopal court of M. That judge pronounced a sentence adverse to the sacred bond, although previously neither an examination of the couple nor a testi-

[*Latin ed. p. 133*]

In the matter of marriage, the seventh judge inquired into the matter, but, adhering only to the testimony of the Chancellor, who stated that no dispensation had been presented by the spouses for the purpose of contracting the marriage, he rendered his judgment. Against this judgment, the defender of the bond appealed to a higher court, according to the Bull of Pius IX, *supra*, in many serious matters (1): because neither the alleged affinity seemed sufficiently proven, nor was it certain that the Apostolic See had granted a relaxation of the impediment. However, the second judge, without employing any further diligence, upheld the first judgment. The defender of the bond abandoned his opposition and did not appeal further; but the woman, who had consented that her two daughters, who were her properties, be separated from her husband, grieved more over the loss of these daughters than over the loss of her husband, petitioned the Apostolic See to declare the double judgment invalid. At the same time, the petitioner declared that an impediment, discovered after the marriage, had been dispensed with by ecclesiastical authority. The cause was treated economically, with the opinions of the consultants, and with the observations of the defender of the bond, a synopsis of which we present here.

Synopsis of the discussion: "It is necessary to prove the existence of affinity from authentic records, that is, from books that are kept in the parish church," said the Canonist; "but it seems incredible to me that the impediment should have lacked any relaxation." However, the judges, having summoned no witness from among friends or relatives to render their judgment, stated that the Chancellor of the Archbishop had presented the testimony that no dispensation had been presented by the spouses for the purpose of contracting the marriage. What if it had been presented by someone else? What if it was for a marriage already contracted? But, since nothing is admitted to exist in the Chancery, it does not follow that such a thing never existed before. Who is ignorant that official documents are often lost from the archives, either through injury or through the corruption of servants? Hence, the OPINION OF THE CANONIST. (1) You have this Bull in Vol. I, p. 186: in it, the method by which ecclesiastical causes may

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be judged, or must be judged, in the island of Sicily, is prescribed.

[*Latin ed. p. 134*]

134. Concerning MARRIAGES, inquiry must be made from witnesses and relatives, whether they knew or heard of any impediment before or after the marriage, or of any dispensation granted or to be obtained. Inquiry must be made of the man as to how long ago he knew the marriage to be null; and of the woman, whether she truly knew the impediment to be removed, and how; whether publicly or secretly, and in the forum of conscience. The Holy Penitentiary, through the confessor, can relax impediments granted by Pope Benedict XIV in Institutiones, 87, number 9; of which dispensation no document may exist in the archives (1). But if doubt still remains concerning the validity of the marriage, will the marriage be dissolved solely because of the absence of a single document, after it has existed for nearly twenty years? To avoid scandal and the admiration of public opinion, a dispensation could be requested from the Supreme Pontiff; indeed, if it is necessary to heal the marriage at its root, provided that good faith in the act of marriage is established, it can be done, having been originally initiated before the Church. The Roman Pontiffs have sometimes used this remedy with one spouse, or at least with one unaware, or even after the death of both spouses, so that legitimate offspring may be born. It is not necessary that the prior consent morally persevere; for Pope Benedict XIV granted this healing while one of the spouses sought the dissolution of the marriage, as decreed in the matrimonial Bull, volume 4, number 51. OPINION OF A THEOLOGIAN. This author states that among the principal conditions by which the dignity of marriage is protected, so that the most vile liberty of the flesh is not introduced, the following must be considered in this case: that which prohibits marriage to be celebrated, and dissolves a marriage already celebrated, between relatives up to the fourth degree (by legitimate union) in the collateral line. In the Council of Lateran, held under Pope Innocent III, it was decreed that "the impediment of consanguinity" and affinity should not exceed the fourth degree. This prohibition was confirmed by the Council of Trent, Session 24, chapter 5, concerning the reform of marriage. (1) The Holy Penitentiary often grants this indulgence to a simple confessor, who has presented a petition for the penitent, and when grace is granted, a clause is often added to be executed with just letters after the execution.

[*Latin ed. p. 135*]

MARRIAGES: In our case, the young man Salvator was related by blood to Stephen, whose widow was Petronilla; therefore, he was connected to her by a bond of affinity of the second degree; consequently, no marriage was contracted between these relatives. However, the theologian judged that neither a dispensation from the impediment of affinity had been re-

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quested nor obtained by the spouses. Indeed, a trustworthy public witness, namely the Chancellor of the Archdiocese of M., declared that neither the spouses nor the parish priest, nor anyone else, had ever received any papal rescript granting a dispensation regarding the impediment of affinity in the marriage between Salvator and Petronilla. The parish priest of the spouses testified that he had never seen any rescript of dispensation; moreover, having learned of the impediment of affinity after the marriage had already been contracted, he had repeatedly urged Salvator to seek a dispensation, which the latter refused to do. Finally, the woman herself, in the petition, admits that she did not obtain the necessary dispensation. Is it conceivable that the Bishop would have granted this grace of dispensation to the spouses without them requesting it? But to this hypothesis, the Holy Office responded to the Congregation on January 19, 1661: "The assertion that a Bishop can dispense in a public impediment, which prevents marriage due to consanguinity, for the purpose of contracting marriage, either in articulo mortis, or in another most urgent necessity, in which the contracting parties cannot await a dispensation from the Apostolic See, is false, erroneous, scandalous, pernicious, and seditious." Although the Bishops and faithful of Sicily were being harassed by heretics at that time, all means of free communication were still available to them with Rome. Finally, if, after the marriage was contracted, the confessor had obtained a dispensation from the Holy Penitentiary, the woman should have remembered the repeated consent, and she should have remembered obtaining the dispensation, at least from her husband, and she should have rebuked him for not having received the sanction. But there is no indication of this. Finally, does the woman have the right to compel her husband to seek a dispensation? It seems that she lacks this right; for, knowing the impediment, and having informed the parish priest...

[*Latin ed. p. 136*]

136. Concerning marriages, the husband did not consent, but returned to the parish priest. Therefore, since she has lived in an illicit union, no injustice has been done to one who was willing and consenting; she has suffered no detriment to her virginity, because she was a widow; nor is a long period of time granted to them, as stated in chapter 8 concerning consanguinity and affinity, where it is established "that if anyone presumptuously attempts to marry contrary to the prohibition, no defense is allowed based on the length of years." Having declared the marriage null by two tribunals, the right to petition for a dispensation remains in the power of both spouses, not of one or the other. And therefore, if the husband is unwilling to petition for a dispensation, a dispensation should not be granted without a very serious reason, according to Saint Bernard and other doctors; and such a reason is entirely lacking in this case.

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OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND.

This defender laments that, in pronouncing a sentence of nullity, both tribunals have set aside and completely neglected all the rules of canonical discipline. Indeed, according to the Instruction of the Sacred Congregation of 1840, §, it is necessary to begin matrimonial cases with the oath of the spouses. Furthermore, §, not only are the spouses to be subjected to the same judicial inquiry, but also witnesses are to be called from both sides. For these cases concern the most serious matters, not only the rights of the spouses, but also the religion of Christian marriage; nay, the sacramental bond, which, by divine institution, is eternal and indissoluble. Even in a case of nullity, due to impediments of consanguinity or affinity, which can be demonstrated from the parish or curial records, one cannot deviate from these safeguards. For this is derived both from the Constitution *Dei Miseratione* and from the aforementioned Instruction, in which no distinction is made for such impediments. But for all matrimonial cases, the norms and rules to be observed are given absolutely and generically. Hence, in the preamble of the aforementioned Instruction, it is said, "that, with accumulated and thoroughly accurate proofs, in cases of this kind, which are the most serious, in which the validity or nullity of the sacrament is at stake, the judges may safely rest assured in pronouncing their judgment."

(1) Furthermore, Alexander III, Instruction, Volume I, page 439.

[*Latin ed. p. 137*]

Of MARRIAGES 137, in chapter x, concerning consanguinity and affinity, witnesses are required in the cause of marriage contracted by a widow; whereas, after a marriage was sought by two sworn accusers, due to an impediment of consanguinity between the man and the deceased spouse, it was decreed that the investigation be dismissed, with other circumspect witnesses being added and all exceptions considered. Indeed, so varied and numerous can be the circumstances, that proof of a dispensation granted by the Church may emerge from the testimonies of the spouses and witnesses. However, in our case, how was the discipline of the Church observed in the judicial order? In the disputed marriage, a sentence of nullity was pronounced by both Courts, based solely on a genealogical tree, which established an affinity of the second degree between the Savior and Petronilla. No examination was held for the spouses, no oath was taken by them, and no investigation was instituted with witnesses from outside. It must not be forgotten that the woman was turned away because an impediment had been dispensed with by ecclesiastical authority, as soon as it became known. Now, what proof could be adduced if a dispensation had been granted by the Holy Penitentiary? It is certain from the Constitution *Pastor Bonus* of Benedict XIV that the Major Penitentiary has the power to grant a dispensation from the second degree of consanguinity or affinity,

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if, after a marriage rightly and in good faith contracted, the impediment has remained hidden for at least ten years. It is also known that the Penitentiary often grants dispensations to validate a marriage, even if one of the spouses is unaware of the impediment, or of the requested dispensation. Therefore, since Petronilla confessed that the impediment had been healed for a long time, the necessity of instituting a formal examination arose, so that it might emerge whether any proof could be offered regarding this dispensation, either from witnesses or from the Priest, whose ministry may have been employed. Furthermore, whatever might emerge from this examination, the defender says, is true, and it substantially weakens the process.

[*Latin ed. p. 138*]

It was determined that there were issues concerning the marriage; therefore, in this and other similar cases, it was requested that the E.E. and P.P. [Ecclesiastical and Pontifical authorities] ensure that the proceedings of the case be completed duly and properly. After considering these matters, the question to be examined was whether the sentences of the Curiae [Tribunals] of M. and C. should be confirmed or upheld in this case. The Sacred Congregation of the Council responded: The proceedings of the case should be completed in M. CAUSE PROSECUTIO. At the order of the Sacred Congregation of the Council, the question was properly instituted in the Curia of M., and the spouses, the parish priest in which the marriage was celebrated, and seven witnesses from each side, as well as seven relatives by blood, all of whom were sworn, were heard; a defender of the marriage was also present. Then, Petronilla, as the canonist states, was summoned for examination, and after five months, she appeared, in order to add to the troubles of the man who was already preparing for a new marriage. But when questioned by the delegate, she responded: that no dispensation had been granted before or after the marriage, and that she was unaware of any impediment. Then, the defender insisted, questioning her as to by whom and from where she had obtained the dispensation, of which mention had been made in the appeal. To this, she replied: I have become certain through a certain person. When questioned once and again as to what person that was, she replied: I cannot reveal her, and I will never reveal her. From this, it is clear that the alleged dispensation was nothing other than a mere fabrication and a lie, intended to delay the judgment, out of hatred for the man who had abandoned her. Moreover, it appeared from the appeal that she had not abandoned him only recently, but for many years. And therefore, if she had heard or suspected anything about the dispensation, she would have declared it immediately, so that she might have victory in her hands. Therefore, the witnesses were rightly asked whether Petronilla could be lying, and all either affirmed it, or said that it seemed

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probable to them.

[*Latin ed. p. 139*]

MATRIMONII 139 The parish priest of the church in which the marriage was celebrated stated that it appeared to him that no dispensation had been requested. For at that time, young people were compelled by the tumult of the people to seek out parish priests to assist at their marriages. Hence, these same parish priests were often unable to exercise all due caution in ascertaining the freedom of the contracting parties. However, the defender of the bond added that the judge should also have inquired whether the marriage of Petronilla with the nephew of Salvator had been consummated. For an affinity does not arise simply from a marriage that is valid, as Sánchez clearly demonstrates in I. 7 de impedimentis, disp. 44, n. 25. Regarding the dispensation previously granted, he stated that there is a very serious presumption arising from the legitimate manner in which the marriage was contracted. For the parish priest had performed, directed, and blessed the marriage; it cannot be supposed that he would be so ignorant and cruel towards his people as to wish to cast them into a state of impurity. Furthermore, the parish priest could not have been unaware of the existence of the impediment, since this concerned a small parish, whose inhabitants are so well known to the same parish priest that he is aware of the domestic relationships of each of them. Moreover, the defender concluded, it can be deduced from the records of the proceedings that this impediment could be kept hidden: for although it was known to the parish priest, or to one or the other of the inhabitants of the town, it was not known to the general public. For during the eight years in which the spouses lived peacefully together, no suspicion of an impediment was held by the populace. Indeed, in this hypothesis, the Bishop can dispense, at least in the case where there is danger in the delay, and recourse to the Roman Pontiff is not easily possible, (1) as also taught by Benedict XIV De Synod. Dioec. L 9, cap. 2, n. 2. Based on this theory, could not our parish priest have referred the matter to the Bishop and obtained a dispensation? Indeed, if the circumstances were urgent, the political unrest was grave, and there was great anxiety due to the arrival of the army... (1) See Recole, Vol. X, p. 155: where it is discussed the power of Bishops to dispense from hidden impediments, in cases of extreme necessity.

[*Latin ed. p. 140*]

140. The most virtuous marriage of the Duke, whose body still awaits cremation, while his soul... already holds the reward due to its merits. Having newly considered these matters, it was deemed by the E. E. P. P. [Most Reverend Fathers] necessary to examine the question of whether the sentences of the Tribunal of M. and the Tribunal of C. should be confirmed or annulled in this case.

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RESOLUTION. After careful deliberation, the Holy Congregation [Sacra Congregatio] decided on April 22, 1882, to respond: Affirmative... to the first part, negative to the second.

(1) (1) In this matter, the defender of the bond of marriage rightly laments that both Tribunals have disregarded the proper judicial procedure and have been removed from the most holy sanctions of the Church. However, whoever considers this matter sees that it was easily resolved from the beginning: for it is established that an impediment of affinity existed between the spouses, and that no dispensation was requested or granted from it; therefore, the question was settled, and no marriage existed. Yet, the envious rage of Petronilla, which had persisted in her days, while the Savior was still young, devised a lie, asserting that the impediment had been relaxed. But she wrongly agitated the sacred Dicasteries; for, being duly summoned and questioned by the judge, she testified that no pontifical dispensation existed, neither before nor after the marriage.

However, the conduct of the parish priest is astonishing, concerning the salvation of the flock entrusted to him. Due to the uproar of the people, who urged the parish priests to quickly celebrate marriages in order to evade the new decrees of the dictator regarding military service, the parish priests, without taking any precautions regarding the freedom of status of those requesting marriage, were joining them in the sacred bond. Therefore, the parish priest obeyed the clamoring people, just as Pilate obeyed the Jews, and neglected and violated the most holy laws; and, even after the uproar was quelled, he took no care to apply a remedy to so many evils! For the spouses remained for many years in a state of concubinage under the eyes of the pastor.

[*Latin ed. p. 141*]

III. FROM THE SACRED CONGREGATION OF RITES, APPENDIX III: MISSES. Mass of the Blessed Confessors Alphonsus of Orozco, Charles of Setia, and Humilis Bisiniai. ON THE NINETEENTH OF SEPTEMBER, upon this heavenly altar, you adorned yourself with the light of the Confessor, Saint Alphonsus of Orozco, besides the Confessor's prayers and strength: Grant us, we beseech you, the outstanding spirit of the Word and counsel of Blessed Alphonsus; that, aided by his warnings and examples, we may attain rest, "as the palm tree," through the Mass. O Jesus Christ, receive, through your most holy Body, this immaculate Host, in odor of sweetness, Amen. APRILIS. Commemoration of Confessors, not of Pontiffs, besides the following prayers. D. Secret of the Confessor. May we be strengthened by the Lord. BEATI CAROLI A SETIA, striving in the earth, may he grant you to enter into eternal life above. To him, who, as a herald, was filled with glory, may he grant you to be a pledge of glory. May he who tasted the joy of the Confessor, so that we may, through the divine food

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received, be cleansed by his gaze and pierced by the dart of purity; through the intercession of Blessed Charles, may he look upon us mercifully, and may he, with the fire of his love, gently and constantly guard our hearts. Through the Lord. We beseech you, O Lord Jesus Christ, that as Blessed Alphonsus, whom we ask for, may he sanctify us, Amen. Postcommunion.

[*Latin ed. p. 142*]

142. THE SACRIFICE OF THE MASS: May we, inflamed with charity through the merits and example of the Blessed Charles, worthily receive this holy Sacrifice. Prayer: O Lord Jesus Christ, who art meek and humble of heart, we implore You, Lord, to make us humble, like the Blessed Confessor, an outstanding example of humility and gentleness, that, vivified by Your precious Body and Blood, we may perpetually serve You. Who lives and reigns for ever. Secret. May we, through the intercession and imitation of the Blessed Charles, deserve to receive the abundant fruit of Your Passion. Who lives and reigns for ever. We offer You this sacrifice of propitiation, as the Blessed Humility offered her prayers to You. Blessed Humility of Bisignano, Confessor. Commemoration of St. Lawrence, Confessor, not of the Pontifical rank, besides the following: Lord, may that which we have taken excite and nourish in our hearts the desire for the Kingdom of Heaven; that through the merits and examples of the Blessed Humility, progressing in holiness, we may happily arrive at You. Through the Lord. NOTICE: New Offices to be inserted in the Universal Calendar. By Apostolic Brief of July 28, 1882 (1884), the following days may be assigned to the Offices in the particular Calendars, provided that other Offices are not already attached to those days: (This has the force of law, as was the case with the Offices of the Calendar of the City). Congregation of Sacred Rites, September 13, 1882. LAURENTIUS SALVATI, Secretary. (1) See Belata, page 54 of this volume. R. C. Secretary.

[*Latin ed. p. 143*]

143 FROM THE HOLY CONGREGATION OF THE ROMAN INQUISITION. DECREE, on the fourth day of July, in the year 1882. The Most Holy Sacred Congregation of the Eminent and Reverend Cardinals of the Holy Roman Church, throughout the Christian Republic, against heretical perversity, the General Inquisitors, on the fourth day of July, in the year 1882, condemned and proscribed, as it condemns and proscribes, and ordered that the following work be referred to the list of prohibited books: the pamphlet entitled: "A Reproduction of a Discourse Recited by Monsignor Gennuardi, Bishop of Acireale, with Notes Dedicated to the Illustrious and Reverend Monsignor Guarino, Archbishop of Messina," published by the Bellini Printing Establishment, Largo Spirito Santo, number 15, 1882 (1). On the same day, and on the feast day, the Most Holy Lord, Our Pope Leo XIII, by Divine Providence, having heard a report concerning

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the aforementioned pamphlet, confirmed the decree and ordered it to be promulgated. Given in Rome, on the day and feast day mentioned above. Fr. VINCENT LEO SALLUA, Ord. Praed., Archbishop of Chalcedon, General Commissary of the Holy and Universal Inquisition. Juvenalis Pelami, S.R. et Univ. Inquisii, Notary. (1) Which title, in Latin, is thus: "Nova editio discursus, habitus R. P. D. Episcopo Iacae Beatis, cum notis dedicatis Illmo atque Emo P. D. Guarino, Archiepiscopo Messanensi. - Catanae, ex aedibus typographicis Bellini Largo Spirito Santo n. 15, 1882."

[*Latin ed. p. 144*]

144. A decree is issued stating that those who are not obligated to abstain from meat on certain days are nevertheless bound by the law concerning the separation of permitted and prohibited foods. June 23, 1875. To this Holy Congregation, a doubt was presented by the Bishop of Bayonne: "Whether the obligation not to mix fish with meat during the days of Lent applies to all those who, by dispensation, are permitted to eat meat, or only to those who are fasting." On June 23, 1875, in a general Congregation of the Holy Roman and Universal Inquisition, before the Eminent and Reverend Cardinals, the general inquisitors, concerning the aforementioned doubt and the preceding vote of the Reverend Consultors, the same Eminent and Reverend Cardinals ordered that the following be written: "Affirmatively, with regard to the first part; Negatively, with regard to the second part; and let the decree of March 24, 1841, be given; namely, concerning the doubt: 'Whether the law concerning the separation of permitted and prohibited foods also applies to those who are not obligated to eat only one meal, such as young people before they complete their third seventh year, and others who are reasonably excused from it due to impotence or labor?'" The Eminent Cardinals decreed: "It is not permitted."

(1) In Volume XIV, page 568, we have presented two declarations of the Holy Penitentiary, concerning those who are dispensed from the law of fasting due to age, labor, and infirmity. By the present decree, in accordance with these declarations, it is resolved that all those who are dispensed from the law of fasting are nevertheless bound by the obligation not to mix fish with meat during the days of Lent.

[*Latin ed. p. 145*]

143 TO SAINT FRANCIS OF ASSISI AND FOR THE PROMOTION OF THE THIRD ORDER OF FRANCISCANS, Most Holy Lord, Our Pope LEO XIII! Encyclical Letter to the Patriarchs, Primates, Archbishops, and Bishops throughout the Catholic world, bestowing grace and communion with the Apostolic See. VENERABLE BROTHERS: Greetings! { * AND APOSTOLIC BENEDICTION. It has been granted to the Christian people, within a brief interval of time, to commemorate those men who, having been called to receive eternal rewards in Heaven, have left behind in this world a distin-

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guished company of disciples, as a perpetual offspring constantly renewing their virtues. — Indeed, after the solemnities in honor of Saint Benedict, the father of monks in the West, the occasion is near for publicly honoring Saint Francis of Assisi, the seventh after him, born at the close of the preceding century. And this, we believe, has certainly come to pass through a certain benevolent design of Divine Providence. For, having offered to the people an opportunity to celebrate the birth of such great men, it seems that God wishes to remind them that they should remember the merits of these men, and also to understand that the religious orders founded by them should not be violated in any way, especially in those countries in which they have flourished through the labor, ingenuity, and diligence of men. — We are confident that these solemnities will not be without fruit for the Christian people, who have always been accustomed to hold religious brethren in the place of friends; and therefore, just as the name of Saint Benedict has been honored with great piety and affection, so now the memory of Saint Francis will be celebrated with a festive observance and with a renewed significance of devotion. And this honorable contest of piety and reverence is not limited to the region in which the most holy man was born, nor to neighboring areas.

[*Latin ed. p. 146*]

146 ENCYCLICAL LETTER concerning the presence of his nobility: wherever the name of Francis has spread, or his institutions have been propagated, it is evident. We certainly approve of this zeal in the best of ways, especially because we have, from our youth, been accustomed to admire and venerate the most holy Francis of Assisi, and we glory in being associated with the Franciscan family, and we have freely and joyfully ascended the sacred slopes of Auvergne, for the cause of piety, not once, but many times: in that place, so full of the image of so great a man, wherever we placed our foot, it inspired the soul, but at the same time, solitude quieted the mind and suspended thought, reminding us of those things. — "But, although this devotion to Francis is, in every way, a praiseworthy thing, it is not everything. It must be understood that those who hasten to the blessed [Francis] are not honored in such a way that they are immediately granted favors, but rather, if they are truly devoted to him, they will be most pleasing to those to whom they offer their devotion, and will bring forth fruit for them. In this, however, there is a solid and lasting benefit, so that men admire the excellent virtue which they perceive, and strive to imitate it, becoming better through his example. Which, with God's help, if they diligently strive for it, will be a fitting and very effective remedy for the present evils. — Therefore, Venerable Brothers, we wish to address you through these letters, not only to publicly testify to our devotion to St. Francis, but also to encourage your charity, so that, together with us, you may work for the healing of the

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human race with the remedy that we seek. The Liberator of the human race, Jesus Christ, is the perennial and everlasting source of all the good things that come to us from the infinite goodness of God, so that, just as He once saved the world, so He will save it in all ages: "Neither is there salvation in any other. For there is no other name under heaven given to men, whereby we must be saved." (Acts 4:12). Therefore, if, at times, the human race, through the fault of nature or the fault of men, should be in danger of falling into ruin, and seem to need a special remedy to escape, it is absolutely necessary to turn to Jesus Christ, and to seek refuge in Him. For the divine remedy is such that all healing is placed in it. We believe that this virtue is so great, so certain, and so powerful that it is the surest defense against dangers, or the most effective remedy for evils; it is the profession of Christian wisdom, by which the human race is restored to health, if only it adheres to the evangelical way of life. But to those things which we have said, if evils occur, and comfort is provided by divine providence, God almost always commands that there should be, among many, one man, or at least a very special one, whom He appoints to the public office of restoring order.

[*Latin ed. p. 147*]

ENCYCLICAL LETTER 147, dating from the end of the twelfth century and somewhat later; Francis was the perfector of this great work. This was an age in which the Catholic faith, with its inherent virtues, flourished deeply in the hearts of men, but also in which licentiousness had greatly altered popular customs. Nothing was more necessary for men than to rekindle the Christian spirit. Indeed, the head of a generous soul is patience, an affection, a Christian virtue of great difficulty, which is somewhat foreshadowed by the Cross, and those who wish to follow Christ must bear a heavy burden of affection. They must abstain from worldly things, command themselves severely, and bear adversity with ease and moderation. Finally, charity towards God and towards one's neighbor is the mistress and queen of all virtues; it is accompanied by an office of such power that it removes all annoyances and makes even the greatest labors tolerable. In that century, many, indeed, were lacking in these virtues, being completely enslaved to worldly things, or consumed by a desire for honors and riches, and they acted accordingly. Many increased their wealth through luxury and licentiousness; their riches having largely flowed into the oppression and contempt of the miserable multitude. And even those who should have been an example to others were not free from these stains. Furthermore, discipline was widely suppressed, and various daily vices followed, with minds so divided and hostile that even the smallest cause would lead neighboring cities to wage war against each other, and citizens to inflict inhuman cruelty upon each other with iron. It was in this century that Francis lived. Yet, with remarkable constancy, he approached his words and deeds with

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genuine Christian perfection, presenting a model for the decaying world to behold. Indeed, just as Dominic Guzman defended the integrity of heavenly doctrines at the same time, and repelled the errors of heretics with the light of Christian wisdom, so Francis, led by God, achieved that he might stir up Christians to virtue, and transmit the imitation of Christ to their ears, so that they might long and greatly turn away from their devious paths. It was certainly not by chance that these sentences from the Gospel, "Do not possess gold, nor silver, nor money in your purses, nor a double cloak, nor sandals, nor a staff" (1), were heard by him in his youth. And, "If you wish to be perfect, go, sell what you have, and give to the poor; then you will have treasure in heaven" (Matthew 10:9-10).

[*Latin ed. p. 148*]

148 LETTER. ENCYCLICAL. You have and give to the poor... and come, follow me (1). Interpreting these words as if addressed specifically to him, he immediately renounces worldly things, changes his clothing; he foresees future hardships, and he determines that those great precepts of virtue, which he had embraced with a lofty and upright spirit, will be a source of consolation. From that time forward, amidst the softness and the most delicate aversion to the world, he began to walk with a harsh and austere life: seeking his sustenance bit by bit; and he endured those things which are considered most bitter, the follies of the insane populace, with a marvelous alacrity. For he understood that the folly of the Cross is perfect wisdom; having embraced Christ and having penetrated the mysteries of His august person, he judged that he could never better glorify God. Together with the love of the Cross, a vehement charity permeated the heart of Francis, which impelled him to courageously undertake the propagation of the Christian name, and for this reason he offered himself, even openly, to manifest danger. With this charity, he embraced all men, but especially the poor and the wretched, those whom others had learned to avoid or despise, for in them he found the greatest delight. In this way, having been so wonderfully affected by this charity, he merited that Christ the Lord should gather from the entire human race one family, established in the power of one Father, God. Therefore, with all these virtues as his support, this most innocent man strove to transfer, as far as he could, the form of Jesus Christ into himself. And it seems that, through divine providence, he attained certain external resemblances to the divine Redeemer. Thus, as an example of Jesus, it happened to Francis that he was laid in a stable, on a bed of straw, in a place where he might be brought to light, with an infant lying in his arms, just as once Christ Himself was. At that time, as is reported, choirs of angels descended from Angelorum, and the sound of their singing filled the air, resembling a concert. Also, certain men were chosen, who accompanied him, as Christ chose the Apostles, to preach the Gospel and announce eternal salvation. Poor, rejected by his own, and

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contemptuously insulted for the sake of Christian peace, he presented this likeness of Jesus Christ, and he did not even want to have his own property, a sign of this similitude, as he bowed his head towards his own Calvary, his own new Alvernia. As a final example, on the summit of the mountain of Alvernia, as if to be acted upon by the divinity, sacred stigmata were imprinted upon his body, and he was almost crucified. We remember this event at this place not less marvelously than...

[*Latin ed. p. 149*]

ENCYCLICAL LETTER 149, illuminated by the preaching of the ages. For, having once been deeply absorbed in the sufferings of Christ, and having reflected upon their most bitter force, and as if thirsting, he drew from them, when suddenly an Angel appeared to him from heaven: and thus, with a certain hidden power, he felt his hands and feet as if pierced by nails, and also his side as if wounded by a sharp point. After this, he conceived a great flame of charity in his heart: and for the rest of his life, he bore the living image of the wounds of Jesus Christ upon his body. These wonders, which are more fitting to be celebrated by angelic rather than human voices, sufficiently demonstrate how great a man he was, and how worthy he was to be chosen by God to lead his peers back to Christian morals. Indeed, when Francis was praying in the church of Saint Damian, he heard a voice, greater than any human voice, saying, "Go and repair my house, which you see is falling into ruin." No less wondrous was the vision granted to Innocent III, when he saw the walls of the Basilica of the Lateran leaning, and Francis supporting them with his shoulders. The meaning and reason of these portents are clear: for it was signified that Francis would be a great support and pillar of the Christian republic during those times. Truly, he did not hesitate, but those twelve who first joined his order were a small number, like a seed, which, by the grace of God and the favor of the Supreme Pontiff, quickly grew into a rich harvest. Therefore, he described to them, according to the examples of Christ, various institutes for Italy and Europe, for the cause of the Gospel: and he assigned them certain tasks, so that they might even go as far as Africa. And without delay: poor, uneducated, and rough, they nevertheless dedicated themselves to the people: in the streets and squares, without any apparatus or pomp of words, they began to exhort men to despise worldly things and to consider the thoughts of the future age. It is astonishing how much fruit was produced by such seemingly inept workers. For to them flocked a multitude eager to hear: and then, with tears, they confessed their sins, forgot their injuries, and, reconciled, returned to the counsel of peace. It is incredible how much inclination and almost impetuosity of spirit stirred towards Francis. They flocked to him in the greatest crowds, wherever he went: and from towns and more crowded cities, all the citizens came indiscriminately, supplicating him to receive them properly into his order. Therefore, the reason arose

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for the most holy man to establish a fraternity, the Third Order, which would receive all conditions of people, all ages, both sexes, and would not break the bonds of family and domestic affairs. He tempered it prudently, not so much with its own laws, as with the very parts of the evangelical laws: which, indeed, are the foundation of the Christian name.

[*Latin ed. p. 150*]

The Encyclical letter seems to address more serious matters. Indeed, it commands that factions and quarrels be avoided; that nothing be taken from another's property; that, except for religion and the fatherland, no arms be taken up; that modesty be maintained in food and dress; that excessive luxury be avoided; and that dangerous dances and theatrical performances be shunned. It is easy to understand that such an institution, being inherently beneficial, has proven to be remarkably opportune for this time. — The opportunity presented by this age is indicated by the Dominican family and other orders, and the very outcome confirms it. Indeed, those who gave their name to the Franciscan order were driven by a burning zeal and the greatest devotion, from the humblest to the highest ranks. King Louis IX of France and Queen Elizabeth of Hungary desired this, and over time, many others, including Cardinals, bore the insignia of the Franciscans. — The members of the Third Order, both lay and religious, included the highest pontiffs, bishops, kings, and nobles, who, by their strong spirit, proved themselves worthy of the dignity, and in defending the faith, they endured great envy from the wicked; yet, those virtues which are most honorable and solely to be sought after were never lacking in the approval of the wise and the good. Indeed, Pope Gregory IX, our predecessor, publicly praised their faith and courage, and without hesitation, used his authority to defend them, and called them "new Maccabees." — And the praise was not without truth. This order of men was a great bulwark of public safety: with the virtues of its founder as its guide, it strove to revive Christian morals and laws, and the ornaments of honesty, in the state. Certainly, their works and examples often extinguished the flames of factions; weapons were snatched from the hands of the wicked; the causes of strife and quarrels were removed; solace was brought to the afflicted and the lonely; and luxury, the whirlpool of fortunes and the instrument of corruption, was restrained. Therefore, domestic peace and public tranquility, integrity of morals and gentleness, the proper use of family affairs and protection, which are the best safeguards of human well-being, have, to a great extent, been fostered in Europe by the Third Franciscan Order, as if from a single stock, and the preservation of these good things is largely due to Francis. Moreover, more than any other nation, Italy owes to Francis; for it was in Italy that his virtues were the principal stage, and it is there that it has most felt the benefits. — But even as he was afflicted by so much suffering, he constantly extended his hand to help those in need, never

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failing to alleviate the poverty of others.

[*Latin ed. p. 151*]

ENCYCLICAL LETTER concerning his most memorable deeds. He spoke to them with the familiar words of his homeland: "He expressed the power of charity both through words and through poems, which he taught to the common people, and which were considered worthy of admiration by learned generations." In the thought of Francis, a certain inspiration and elevation stirred the minds of men, so that in depicting, imagining, and portraying his deeds, the industry of the greatest artists was employed. He found in Francis, as Alighieri sang with grandiloquence and the sweetest verse: Cimabue and Giotto, who with their brilliant lights illuminated the path to immortality; artists who built, who accomplished magnificent works, whether it was the tomb of a peculiar man, or the church of *Mariae Angelorum*, witness to countless miracles. To these temples, people from all places are accustomed to come, venerating the father of the poor of *Assisiensem*, to whom, having completely renounced worldly possessions, the gifts of divine goodness flowed abundantly and copiously. Therefore, it is clear that from this one man, a great force of benefits flowed into the Christian and civil commonwealth. But since this man possessed a spirit, entirely Christian and wonderfully so, and was perfectly suited to all times and places, no one can doubt that the institutions of Francis will greatly benefit our age. Even more so, because the conditions of our time seem to be approaching those of his time for many reasons.

Just as in the twelfth century, so now, the divine love has diminished not a little; and the performance of Christian duties is disturbed, partly by ignorance, partly by negligence. With similar inclinations and studies, many people spend their lives seeking the comforts of life and greedily pursuing pleasures. Consumed by luxury, they plunge into depths, they desire what belongs to others: while extolling the name of human brotherhood, they say more than they do; for they are carried away by self-love, and genuine charity towards the weaker and the poor diminishes daily.

During that time, the error of the Albigenses also disturbed the peace, inciting a mob against the power of the Church, and paving the way for a kind of socialism. Today, similarly, the supporters and propagators of Naturalism have grown; who stubbornly deny that they ought to be subject to the Church, and, proceeding further, as is fitting, they do not spare even civil authority: they spread their influence and deceptions among the people; they attempt agrarian reforms; they flatter the desires of the proletariat; they undermine the foundations of domestic and public order. In these great and numerous evils, it is rightly understood, Venerable Brothers, that a considerable hope for improvement can be placed in the institutions of

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Francis, if only they can be restored to their former state.

[*Latin ed. p. 152*]

452 ENCYCLICAL LETTER: That these things may be restored. For when these things flourish, faith and piety, and all Christian praise, will also flourish; and it will be easy to subdue, by the power of virtue, the desires which are considered by many to be the most hateful burden, and which bind men together by fraternal bonds, so that they may love and show reverence to those who are afflicted, and to those who are poor, who bear the image of Christ. Furthermore, those who, with a clear conscience, truly feel the obligation of religious duty, will, with certain judgment, rightly obey the commands of Christians, and in no matter violate the feelings of others; for there is nothing more effective in extinguishing the roots of all vice in this matter than a good will and a sincere affection. In all these things lie the beginnings, and indeed the very foundations, of Socialism. Finally, in a time when prudent men are working so diligently in civil affairs, it is necessary to establish, with fixed purpose, that it must be the aim of the rich and the poor to be merciful and charitable, and that poverty and wealth are not things to be sought for their own sake, but are means by which, through patience, or through generosity, men are to be brought to Heaven. For these reasons, We have long and greatly desired that everyone, as far as it is possible, should strive to imitate Francis of Assisi. Therefore, just as We have always shown concern for the Third Order of Franciscans, so now, with the greatest benevolence of God, We urge Christians, called to the service of Jesus Christ, not to refuse, when the opportunity arises, to give a name to this holy militia. Many, of both sexes, are already eagerly following in the footsteps of the Seraphic Father. We praise this zeal and strongly approve of it, and We desire that it be increased, and especially that it be commended to more people. To Our Venerable Brothers, We wish to make it clear that those who have put on the insignia of Penance should look at the image of their most holy founder, and strive to emulate him; for without this, all their efforts would be in vain. Therefore, let the Third Order be known and understood in truth, and let those who are in charge of souls see to it that it abounds in privileges, and that it diligently teaches and promises great benefits, both privately and publicly. This is all the more important because the members of the First and Second Orders of Franciscans are at present unjustly afflicted by a grievous plague. May these, defended by the patronage of their parent, quickly emerge from all these trials, flourishing and prospering!

[*Latin ed. p. 153*]

ENCYCLICAL LETTER. 53. Oh, that even the poor Christians might flock to the discipline of the Third Order, so eagerly and so frequently, as formerly they poured themselves out, striving, from all sides, towards

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the very source. This we earnestly desire, and with greater authority, compelled by the needs of the homeland and the abundant resources of Italy, we hope for the French, whom the abundance of benefits urges to be of good cheer, and to give greater thanks for the same. Thus, after seven centuries, it might happen that the Italian people, and the entire Christian world, might, having been recalled from disturbance to tranquility, feel, as did the people of Assisi, a transition from ruin to salvation. Indeed, with common prayer, through the benefits of these days, we implore this from the very Francis, and we strive for it from the Virgin Mary, Mother of God, who perpetually rewarded the piety and faith of her servants. May the favor of heavenly gifts be with you, and as a special witness of our benevolence, we impart the Apostolic Blessing to you, Venerable Brothers, to the entire Clergy and people, earnestly in the Lord. Given in Rome, at St. Peter's, on the seventeenth day of September, in the year of Our Pontificate, 1882, the fifth. LEO XIII, POPE.

FROM THE MINUTES OF THE CONSISTORY HELD ON SEPTEMBER 25, 1882.

The Most Holy Father, after delivering an address, created and publicly announced the following Cardinals of the Holy Roman Church, from the order of Priests:

The Most Reverend Divine Father Angelo Bianchi, Archbishop of Myra in Licia, Apostolic Nuncio in Spain, born in Rome on November 19, 1817.

The Most Reverend Divine Father Wladimir Czacki, Archbishop of Salamis in Cyprus, Apostolic Nuncio in France, born in Poryck on April 16, 1834.

Then, he proposed the following Churches:

THE EPISCOPAL CHURCH OF APAMEN. The translation is, while the Archbishop Aloysius Ruffo de Calabria was alive, the Metropolitan See of Neapolis, with the favor of the Most Reverend Divine Father.

[*Latin ed. p. 154*]

FROM THE CONSISTORY ACTS 154, the venerable Brigadier. The Metropolitan Archbishop of ITANAM |SCC ESIAM A R JÌOREN, reports the death of the Most Reverend Joseph Maria Diez de Sollano, the last of that See, who died outside the Roman curia, favored by the Reverend Fathers Thomas Baron and Morales. The Cathedral Church of CHILAPA in Usküb is vacant, following the death of the Most Reverend Joseph Maria Sei, Archbishop of the Northern Province of Rica. The Cathedral Church of AT;IE-de Ch ilapa is vacant, following the translation of the Reverend Father Thomas Bythen, to the Leo-Joannian See in Mexico, favored by the Reverend Fathers, the last of that episcopate, who died outside the Roman curia, favored by the Titular Bishop of Tricalensis, the Reverend Father

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Joseph William Renatus Bonaventura Portillo, of the Order of the Minor Observants, to the Vicariate Apostolic of Catalonia. The Cathedral Church of PATA-VETAN is vacant, following the translation of the Reverend Father Anthony Briganti to the Archiepiscopal See of Apamea, favored by the Reverend Fathers, the last of that episcopate, who died outside the Roman curia, favored by the Reverend Father Eusebius Magner, Bishop of Tarvisini, of the Order of the Minor Callegarians. The Cathedral Church of VISIN is vacant, favored by the Reverend Father Joseph D. Callegari to the See of Padua, the Cathedral Church of R. P. vacan, favored by the Reverend Father Joseph Apollonio, Archbishop of Tarvisini; the Reverend Father Anthony Polin, Titular Bishop of Miltensis, is vacant, favored by the Reverend Father Eusebius Magner, of the Order of the Minor Capuchins, to the See of Urbevetanam, the Reverend Father Adriensis. The Cathedral Church of TAR-DRIEN is vacant, favored by the translation of the Reverend Father Capuchins, favored by the Reverend Father Eugene Clari, a priest, who, born of legitimate and honest parents in Senigallia, having surpassed the sixtieth year of his age, entered the priesthood, and after studying at the Gregorian University, and at the Roman Pontifical Seminary, in the Mexican American territory of the Northern Province, is vacant, favored by the Reverend Father NEN, in the Cathedral Church.

[*Latin ed. p. 155*]

From the Acts of the Congregation, in both the civil and ecclesiastical courts, the degree of Doctor was recently conferred upon Donatus. In the theological seminaries of Aria, and in the dioceses of Emi, and of Bovino, the Cardinal Consolini, formerly Professor of Dogmatic and Moral Theology, and of academic theology, and chosen among his most intimate advisors to the Sacred Congregation, acting as Rector, was previously a Canon in the Cathedral of Bovino, and has now been appointed. The Canon of the Cathedral of Senigallia was elected, and simultaneously appointed Pro-Vicar General of the deceased Dean, and Archpriest, and has been notified of his appointment. He is currently holding the dignity, and the office of administrator of the Cathedral Church. The Cathedral Churches of Marsicven and Potentin are united in perpetuity, by translation. The Cathedral Church of Paren is vacant. The Reverend Father, through the translation of Father Paul Joseph Mary Serci Serra, from the Metropolitan See of Arborensem, in favor of the late Reverend Father Dominic Anthony Mary, in favor of the Reverend Father John Andrea Miotti, a priest of Comensis, and Reverend Father Anthony Contini, a priest of the diocese of Bosana. The Reverend Father Anthony Contini, chosen as an Apostolic Missionary, and among the forty-fourth year of his age, born of legitimate, Catholic, honest parents, and having been enrolled among the Sacred Congregation's most intimate advisors, and having been constituted an Examiner, received the degree of Doctor of Sacred Theology. He was chosen for the seminary of

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Turritano, and in that place and in the Bosanensis, he has been a Master for many years, and in his native town he has for many years performed the duties of a parish priest. The Cathedral Canon of Bosana, Reverend Father Aloysius Carvelli, was translated to the See of Milete, in favor of Reverend Father Tiberius Durante, a priest of Bovino. The Cathedral Churches of Parentin and Polen are united in perpetuity, by translation. Reverend Father Tiberius, born of legitimate, Catholic, honest parents, and having surpassed his forty-fifth year, in the Sacred Theology, received the degree of Doctor, and was nominated to the See of Tergestin and Justinopolitan, in favor of Reverend Father Aloysius Zorn, a priest of Gorizia.

[*Latin ed. p. 156*]

156 FROM THE CONSISTORY ACTS of Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, by virtue of an Apostolic Indult. Reverend Father Aloysius Zorn, and other devout Catholics, from the legitimate, Catholic, and honorable family of the late Augustine, Bishop of that diocese, who died outside the Roman Curia, were presented by Father David, with the favor of Angel Maria, Reverend Father Eugenius Bouché, a priest of the diocese of Saint-Brieuc (-Tréguier), for the nomination of the illustrious Monsieur Julius Grevy, President of the French Republic, who has completed his forty-eighth year. Reverend Father Eugenius Angel Maria Bouché, born of legitimate, Catholic, and honorable parents, and recently received the doctorate in sacred theology from the paternal seminary in Gorizia, has now been appointed. Having completed his fifty-fourth year, he has been serving as Professor of theology. He has been appointed as Chaplain of the maritime fleet of Gorizia, in the metropolitan Church of Canons, and until now has been announced as Rector. He has been chosen as a canon of the Cathedral of Saint-Bien, vacant due to the death of the late Bishop Angel John Baptist Jourdan, who died outside the Roman Curia, with the favor of Reverend Father Prosper Billère, a priest of Tarbes, for the nomination of the illustrious Monsieur Julius Grevy, President of the French Republic. Reverend Father Prosper Billère, born of legitimate, Catholic, and honorable parents in Tarbes, and having completed his sixty-fifth year, was a Professor in the seminary of Tarbes, and having surpassed the legitimate years, he was appointed Rector of the Cathedral. He was announced as a canon of the Cathedral of Catalane, vacant due to the death of the late Bishop. He was nominated for the See by the illustrious Monsieur Julius Grevy, President of the French Republic. Reverend Father William Maria Romanus Sourrieu, born of legitimate, Catholic, and honorable parents in Toulouse, and having completed his nomination of the illustrious Monsieur Julius Grevy, President of the French Republic. Reverend Father William Maria Romanus Sourrieu, born of legitimate, Catholic, and honorable parents, having completed his seventy-fourth year, served as a canon of the Cathedral, and previously held the office of Professor in the seminary

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of Tarbes, and subsequently governed several parishes, and in the place called Bigarre, in the diocese of Tarbes, he was appointed parish priest, and until now has been announced. He has been appointed to the Cathedral of Saint-Brieuc, vacant due to the death of the late Bishop.

[*Latin ed. p. 157*]

From the Acts of the Council it appears. A distinguished member of the Sanctuary of Our Lady of Rocamadour, born of legitimate, Catholic, and honorable parents in the sixth year of his age, he was appointed Praepositus of the Catalaunensis diocese in the twentieth year. He was also constituted a Cathedral Canon in Cathe- dral, and declared to have renounced all worldly honors and dedicated himself to the sacred order of theology. He received the degree of Doctor of Sacred Theology. He was ordained a priest in the Cathedral of Sarepta. Under the Archbishop of Tyre, he was transferred to Brixia for the purpose of theological study. The Reverend Father John Francis Jamot, recently nominated for the matrimonial jurisdiction of the See of Petersburg, was elevated to the dignity of Cathedral Prelate by the HOLY SEE. He was appointed Canon Commissary to the Reverend Father Anthony Scott, a legitimate, Catholic, and honorable priest, and domestic chaplain, and was favored by the Reverend Father Anthony Scott of Naples. He was elected to the Episcopal dignity by the Chapter. The Reverend Father Ludovico Marangoni, recently ordained a priest, was initiated into the Order of Minor Friars, and assigned to the Cathedral of Clodiensem. He was favored by the Reverend Father Francis. The Reverend Father Francis Xavier Zaldua, a priest of the archdiocese of Santa Fe in the Neogranaten jurisdiction, was also a deputy to the Auxiliary General. The Reverend Father Ignatius Moudoya, nominated for the See of Sebastian. Under the Archbishop of Tarsus, he was transferred. The Reverend Father Joseph, born in Bogota of legitimate, Catholic, and honorable parents, and having surpassed his twenty-ninth year, was appointed to the See of Peter Bellicensis in Rome among the students of the Latin-American College. He was favored by the Reverend Father John de Leiss, Bishop of Brixia. The Reverend Father Simon Aichner, a priest of the Brixia diocese, was also a deputy to the Auxiliary. He has performed his ecclesiastical functions with great merit.

[*Latin ed. p. 158*]

458 FROM THE CONSISTORY ACTS. In Cesano, at the seminary of the archdiocese, commonly called Villar Sacrae Scripturae, a society called the Schola Christi is established, which governs the archdiocese with profit, zeal for preaching, and with the aim of NEMESIN. It is safe, having been constituted under the Salaminensi, the Archbishop. It is devoted to the ultramarine missions of Portugal, and in the diocesan seminary of Mariae Ephrem, it has attained the chair of rational and dogmatic theology, fol-

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lowing the last Bishop, who has passed away. The chaplain of the college of the Sisters, Garrelon, born in the sixty-third year of his life, is added. The titular episcopal church of Nan-romana is vacant, and with the favor of R. D. Francisci Pauli Carolo, the Reverend Albini, a priest of Benevento, has been appointed as Rector of the seminary of Saint Joseph. R. D. Franciscus Paulus, formerly the General Vicar, and D. Albini, born of legitimate, Catholic, and noble parents of Benevento, in the fifty-third year of his life, has been constituted. THE FOLLOWING WERE APPOINTED TO CHURCHES: By a papal brief: In the Metropolitan Church of Be-saurarius, formerly the archpriest, and among the visitators of the archdiocese, the Reverend Ludovico Stephani Fennelly, following the last Bishop, who has passed away from the Roman curia, with the favor of R. D. Joachim de Me-Antonii, a priest of the archdiocese of Braga. He has also been appointed as an Auxiliary, R. P. D. Antonii Sebastiani Valente, Archbishop Primatis of Goa. The Reverend Carolo Maret, to the diocese of Suren, in Syria. The church of Petroburgensis, Thermopyles, vacant under the Archbishop, and recently erected in the Cathedral in Canada, R. P. D. Ioan. Francisco Jamot, transferred from the church of Sareptan, in Palestina. The church of Politian, Cathedralis Auco-, in New Zealand, R. D. Edmundo Luck, from the Benedictine Congregation of the first observance. The churches of Haygulstaden and Novocastren, in England, R. D. Ioanni Gulielmo deiros Bewick, a canon, from honest and legitimate, Catholic parents, in that place, and vicar capitular of the diocese.

[*Latin ed. p. 159*]

FROM THE HISTORICAL ACTS, 159, Bernon of Cythera. Reverend Father Narciso Zephi, in the Apostolic Vicariate of Larrain, General Vicar of the Diocese of Seychelles. The titular episcopal church is Marianopolitan. Elected as Apostolic Vicar of Pontia in Canada. The titular episcopal church is Vic. Capuccinis, constituted for the Insular Vicariate. The titular episcopal church is Hypsopolitan. Reverend Father Onate of the Order of Preachers, elected as coadjutor with future succession to Gratianopolitan. Reverend Father Mariae, succeeded by Lawrence Francis Cordier, of Riano, Apostolic Vicar, designated for the central Vicariate. Reverend Father Venceslao. Reverend Father Emmanuelis Tunchini, of the Bodiae. The titular episcopal church is Tagasten. Reverend Father Eugenio Coupât, of Carpasien. Reverend Father Stephano Scarella, elected to the Apostolic Vicariate of Ho-Nan, with future succession to Desflèches, Apostolic Vicar, of the southern region. The titular episcopal church is Sut-chuen. Reverend Father Iosephi. The titular episcopal church is Cidonien. Reverend Father Sinforianoa Lam.

FROM THE HOLY CONGREGATION OF THE COUNCIL, CONCERNING THE FACULTY OF BENEDICTING. April 22, 1882. Through a summary petition, Joseph, Archpriest in the City A, in Gallia, presented a

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humble petition to the Holy Congregation, humbly explaining as follows: "There are two congregations established in his parish, for men and women, which received a privilege from the blessed memory of Benedict XIV, to gain a plenary indulgence once a month when they convene in their chapels. However, due to a lack of priests..."

[*Latin ed. p. 160*]

160. CONCERNING THE FACULTY OF OFFERING TWO MASSES! > No one, having the power to offer the sacred rites before the aforementioned Congregations, requested the faculty of offering two Masses twice a month, adding that this faculty had often been granted by the Archbishops of A. Orator's prayers are accompanied by the commendation of the Archbishop, which is as follows: "He humbly supplicates for the grace of the Archbishop, and yet he considers it necessary to confess that already two or three priests in the city of A. offer almost every Sunday two Masses, in order to assist the needs of the parish church, and of the collegiate church and the hospital. Therefore, if the grace requested by the Parochus of A. is granted, almost all the priests of this city will offer two Masses twice a month. And therefore, although the Archbishop of A. has the script [permission], he has not dared to use this faculty in this case, and he considers it fitting to submit the decision to Your Holiness." And a little later, he adds: "It is to be feared that if this grace is not granted, the aforementioned Congregations will suffer great detriment, and will gradually disappear, which would be very regrettable."

SYNOPTIC SUMMARY: THE GRACE APPEARS TO BE DENIABLE. It is known to no one, according to the ancient discipline of the Church, that priests were permitted to offer the divine sacrifice more than once in the same day. However, in later centuries, this ancient discipline was changed. Thus, Innocent III, having been asked by the Bishop of Vigenna – Whether a priest can offer two Masses on the same day – responded: – Except on the feast of the Nativity of the Lord, unless a cause of necessity dictates, it suffices for the priest to offer only one Mass in a day. – Cap. Consuluisti 3 de celebr. Miss. Following in the footsteps of Innocent III, Honorius III affirmed and confirmed the same in Cap. Te referente, under the same title. But what is the cause of necessity, by which, the Supreme Pontiffs allow the priest to offer more Masses on the same day?

[*Latin ed. p. 161*]

CONCERNING THE FACULTY OF SAYING TWO MASSES 161, indulgences have been granted, both according to the opinion of all writers, and according to the entire discipline of the Church, and the constant practice of the Sacred Congregation, so that it must be considered a matter of such gravity that the good of the faithful cannot be provided for in any other way. Fagnanus states this in explicit terms in chapter concerning simony:

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"Regarding licenses to say two Masses, and the sums which, as it is asserted, are paid for these licenses, the Sacred Congregation wonders about the granting of these licenses. For this must only be done out of great necessity, and with great caution, etc." The Sacred Congregation affirms this in several places, especially on September 20, 1622. A grave reason is present when one and the same priest presides over so many parishes, or governs so many distinct peoples, that, because of the distance of the places, or the roughness of the roads, the faithful cannot come together in the same church, or when the church to which the faithful ought to come together is so small that it cannot contain all of them at once, as is given in the decree in the case of Derthusen, in the year 1768, and in Auch, in the year 1853. Furthermore, the aforementioned grave necessity is plainly absent in this case. For it is not a matter of a parish, nor of the distance or roughness of places, nor of distinct peoples, but of a congregation of the faithful, who, unless the faculty of saying two Masses were granted, would not be able to enjoy the indulgences granted by the Supreme Pontiffs to this congregation, because of the lack of the sacrifice of the Mass being celebrated in the oratory. But since this is a work of supererogation, it does not constitute a grave or a light necessity.

THE GRACE TO BE GRANTED SEEMS APPROPRIATE. Nevertheless, it seems that the petition of the petitioner should be heard, and that a fundamental principle of law should be followed, namely, that for the sake of necessity, an exception can be made to purely ecclesiastical laws: such as this one, which prohibits a priest from saying more than one Mass on a day; as is stated in "1ère" in chapter 2 concerning the celebration of Mass, where Innocent III wrote to the Bishop of Vigen: "Except on the day of the Nativity of our Lord, unless necessity dictates, one Mass suffices."

[*Latin ed. p. 162*]

462 CONCERNING THE FACULTY OF CELEBRATING TWO Masses: To a priest, to celebrate one Mass per day. To this disposition, the canons of several Synods conform, which, both before and after the time of Innocent III, established the same prohibition with a certain exception, as is evident from Benedict XIV in the Constitution *Declarasti nobis*, volume 2, of the Bullarium. However, this necessity should not be restricted solely to the cases reported by Doctors and writers on ecclesiastical matters, but, according to the judgment of a good man, should be extended to others that may arise: Schmalzg. teaches this in title 41, concerning the celebration of Mass, number 42, and Layman in book 6, treatise 4, chapter 4, number 6. Indeed, in the case proposed by the Advocate, both the reason of necessity and the reason of utility seem to concur. The former, because, according to the testimony of the Archbishop, "it is to be feared, if this grace is not granted, that said Congregations may suffer great detriment, and gradually disappear, which would be very regrettable." The latter, because, as the Advocate

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asserts, the granting of a plenary Indulgence greatly contributes to the promotion of religion and piety among the members of the Congregations. With these, and other considerations, the question was raised as to what response should be given to the Advocate's request. RESOLUTION. The Sacred Congregation, having considered the matter, gave the following response on April 22, 1882: Negative, and with the understanding that the Bishop should report whether, with regard to two or three other priests who celebrate Mass, a special Apostolic privilege should be granted. FROM WHICH YOU MAY GATHER. I. By this resolution, the opinion of the Doctors is confirmed, and also the constant practice of the Sacred Congregation; which does not usually grant the faculty of celebrating two Masses, unless there is a serious reason that has been deemed to be present in the case before the Fathers. (1) (1) Compare Volume IX, page 230.

[*Latin ed. p. 163*]

163 OF JURISDICTION (1) On April 22nd and June 17th, 1882. Almost two centuries ago, a serious dispute arose between the Neapolitan and Puteolan Courts concerning the jurisdiction over the territory of Quarti and a certain church located there, dedicated to Santa Maria Libera a Scandalis, which each claimed as their own. Indeed, the Archbishop of Naples asserted that this territory and the church belonged to him from the time when, due to a new demarcation of the Diocese of Cumae, to which the territory belonged, it was united to the Neapolitan Archdiocese; the Bishop of Puteoli, however, maintained that it belonged to him based on an ancient, or centenarian, custom. The situation was such that, in the year 1876, when the Bishop of Puteoli, then still a Coadjutor, decided to erect a baptismal font in the church of the territory of Quarti. From this very action, the Most Reverend Archbishop of Naples, Riario Sforza, felt that his rights had been violated, and, through a formal letter presented on July 30th, 1877, he appealed to the Sacred Congregation of the Council, urging that an end be put to this long-standing question; and in the meantime, that measures be taken regarding the innovation made by the Bishop of Puteoli, while the dispute was pending. SUMMARY OF THE FACTS. A concise account: The entire argument presented by the Archbishop of Naples in recounting the history of events is intended to demonstrate that the jurisdiction over the territory of Quarti belongs to him. Indeed, it is noted that the RIGHTS OF THE ARCHBISHOP OF NAPLES are established by all. (1) See Vol. IX, page 407, and Vol. XIII, 26.

[*Latin ed. p. 164*]

164 The territory of Quarti has, for many centuries, been part of the district of Marani, according to the provisions of civil law, and is subject to the jurisdiction of the Archbishopric of Naples. Numerous documents attest that the Archbishops of Naples have exercised their jurisdiction over

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the aforementioned church until the present day. Although it is clear from numerous acts of jurisdiction and historical documents that the Church of St. Mary has been under the jurisdiction of the Neapolitan See from its very origin, the defender, having divided his argument into eight points, sought to overcome the objections raised. In the first point, he attempted to demonstrate that two marble inscriptions, which claimed that the Church of St. Mary was free from scandal and subject to the jurisdiction of a Puteolan Bishop, were apocryphal. To demonstrate this, he pointed out that this marble inscription did not indicate the place where it was located, namely, the Church belonging to the Puteolan Diocese; and therefore, it could not possibly refer to the church whose jurisdiction is being investigated. Furthermore, it is easily apparent to anyone examining the marble testimony that it bears the mark of forgery. Moreover, he argued that the falsity of the inscription is revealed by the very name of the Bishop. For, as testified by the most learned Ughelli, there was no Puteolan Bishop named Peter at that time. The orator also stated that no document could have existed in the Puteolan archives, which were destroyed by fire, to favor the claim of the Puteolan Bishop. He added that it is clear that, after the city of Cumae was abolished, the largest part of the territory of that diocese was incorporated into the Church of Naples, and especially those areas known as Monte di Procida and Quarti, together with the Church of St. Mary, free from scandal, which was located in the territory of Quarti. For this reason, the Archbishops of Naples strongly opposed the alleged claims of the Puteolan Bishop regarding jurisdiction. Consequently, the territory of Quarti, which is the subject of this discussion, has remained permanently under the jurisdiction of 7.

[*Latin ed. p. 165*]

JURISDICTIONIS 165. The parish of Marani, belonging to the Church of Naples, as well as the municipality of Marani, were subject to civil authority. The clergy of Marani served in that church, performing ecclesiastical functions and participating in processions. Turning to the second point of his argument, the advocate defends the church and the monastery, stating that the Bishop of Puteoli did not transfer the Sodalitas Coloritis of St. Augustine to them in the year 1627. Furthermore, it is established by the University of Marani that the monastery, which had existed for many years before the Church of St. Mary, was built by that church, and that the Sodalitas Coloritis were given to it, so that, in the presence of the Bishop of Puteoli, they might perform sacred duties in that church, administer the sacraments, and carry out other things that would benefit the spiritual welfare of the inhabitants. Turning to the third point of his argument, the advocate contends that the Church of St. Mary and its property and revenues had been transferred since the year 1652 to the parish of della Pianura, and that the Sodalitas Coloritis had been suppressed by an Apostolic

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Constitution. Indeed, no such constitution existed, nor was anything of this kind promulgated in that place. Moreover, the plague that broke out in that region after four years caused many of the Sodalitas Coloritis to flee in fear, and many were taken by the plague itself; in this regard, the University of Marani again entered into the possession of the church and monastery, and held it until the year 1704; in that year, at the request of those same Sodalitas, the University, with the consent and authority of the Archbishop of Naples, decreed that they should be restored to that possession by a solemn instrument, with certain conditions attached, by which it was ensured that the parochial jurisdiction would suffer no detriment from the association of the Sodalitas. Turning to the fourth point of his argument, the advocate defends the acts of jurisdiction exercised by the Bishop of Puteoli over the places, goods, and persons from the year 1589 until the year 1676, stating that they must be considered valid. For, as is known, the air was un-

[*Latin ed. p. 166*]

166 "Due to the small size of the territory, and the lack of inhabitants in the Quartus district, and due to certain knowledge that the parish priest of Marani was neglecting his spiritual duties, the Archbishop of Naples had refrained from conducting canonical visitations of this territory. In the fifth section, he presented warnings and prohibitions transmitted from the Holy See, noting that the authentic elements of these decrees were lacking, so that faith could be added to them. However, he declared that even if the authenticity were not fully established, it would not present an insurmountable obstacle. In the sixth section, he sought to demonstrate that commissions and concessions granted by the Holy See to the Bishop of Puteoli concerning the Church, did not disturb the rights of the Neapolitan Curia. Indeed, it is worth noting that the Sacred Congregations, in matters concerning voluntary jurisdiction, usually respond according to petitions, but are required to inquire whether the historical facts contained therein correspond to the truth, and do not directly affect the matter being requested. In the seventh section, it is argued that the Bishop of Puteoli could not legitimately claim the patronage of Somãa, based on the nature of the commendam and the subsequent events. For it is clear that a church or monastery is only entrusted to someone so that they may manage the care and administration of the benefice or church, and that up to that point, they have had nothing in common with the church or monastery, Council of Trent, Session 21, Chapter 8, concerning Reform; Pichler, Uh. III, Title V, number 4 and following. Therefore, when Pope Benedict XIV, and with him the Prelate Galiani, in the year 1751, entrusted the church of Saint Mary to the Bishop of Puteoli, they clearly indicated that the Bishop had not previously held any jurisdiction over this church, nor could he claim any other jurisdiction after this that would exceed the limits of a simple commendam, Rota in Decisions 51, number 4 and 5, Part VII, Recent De-

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cisions. The speaker concluded that all that had been presented thus far could not be undermined by what followed. Indeed, the Bishop of Puteoli acted in the best possible way with regard to the matters pertaining to the commendam, namely, the assignment of the Hermits, and the appointment of priests."

[*Latin ed. p. 167*]

JURISDICTIONIS 167. The mission necessary for the care of the Church was lacking; the remainder pertains to the Neapolitan Ordinary, as if to the local Ordinary, and Commendatius proceeded without any legal right whatsoever. Therefore, he rashly undertook pastoral visitations, attended to the administration of the Sacraments, completed the collation of the benefice, and proceeded to the arbitrary erection of a baptistery, while a dispute was pending. Finally, addressing the last point of the argument, the Defender maintained that in the matter under consideration, the prescription could not be applied. For, as is stated in Can. 5 and 6, question 3, chapter 3, of Parodi, the certain and manifest limits of dioceses, parishes, and regions cannot be prescribed by prescription. Moreover, even setting this aside, he stated that it must be inquired whether the exception to prescription meets the conditions necessary for it to be considered solid and valid. Furthermore, in the first place, a legitimate title of possession is required, capable of transferring ownership, by which the Bishop of Puteoli can defend his holding of the Church and the territory of Quarto. But the title required by prescription, and upon which good faith is also founded, must be just, or approved by law for the purpose of prescription, such as is only the case with that which transfers ownership or jurisdiction, or which, by its very nature, is capable of transferring ownership. Moreover, according to civil and canon law, titles suitable for this purpose are those of a purchaser, an heir, a legatee, a donee, a person who has relinquished a right, a dowry, a payment, a rightful claim, as stated in Lib. 41, Title 4, of the Digest, and in Lib. 7, Title 26, of the Code. However, none of these is valid for the Bishop of Puteoli, if at no time was there ever an instrument relating to the foundation or aggregation of this territory, nor any concession from the Supreme Pontiffs, nor any decision from an Ecumenical, Provincial, or Diocesan Council. Nevertheless, the Bishop of Puteoli places all his hope in the alleged dedication of the Church in the year 1243, in the calling of the Sodalium Coloritorum, and in their suppression by the Constitution of Benedict XIV, concerning which matters have already been discussed. Furthermore, everything necessary is available to refute any comment on any opinion.

[*Latin ed. p. 168*]

168 The true and legitimate jurisdiction, upon which the original possession of the Neapolitan Curia is based, arises from the aggregation of the

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greater part of the territory of Cumae, within which was contained the district of Quarti and the Church of Saint Mary. What, moreover, is to be said concerning good faith, without which the very idea of prescription cannot be conceived? Indeed, good faith is understood in judgment, and in the dictate of conscience, or in the credulity with which one prudently believes that what he possesses is his own, or at least not alien, even though in reality it may be alien. Certainly, the prelates of Puteoli, while the Archbishops of the Neapolitan Curia remained passive, have sometimes dared to do more things which pertain to the ordinary jurisdiction of another. However, they knew, and could not have failed to know, that they accomplished these things only through the usurpation of jurisdiction, which was held by the Neapolitan Diocese by reason of its origin, namely, from a true and legitimate title of possession. Nor could the commendation of the Church of Saint Mary to the prelate of Puteoli, by the will of the Pontiff, induce good faith in him, since he knew, or ought to have known, that the commendation of the Church did not constitute him the ordinary of that place, but simply the administrator of the goods and revenues of that Church. Finally, the time necessary for prescription is utterly lacking, the orator declares. It is well known that, when the rights of the parties are uncertain, the ancient custom of the Church must be observed; Nicaean Council, canon VI; Council of Ephesus. But this ancient custom, with regard to the time required for prescription, is founded on a period that exceeds human memory, which exceeds the memory of men, and which has proceeded without any complaint, as stated by Benedict XIV, in Constitution 33, Volume 2 of the Bullarium. Furthermore, the actions of the Bishops of Puteoli began in the year 1589, with the tolerance of the Neapolitan Curia, and ended in the year 1618. Even if the tolerance of the Archiepiscopal Curia could be shown to have continued until the year 1676, this silence would not have exceeded eighty-seven years, which, from the foregoing, would not only directly contradict prescription by immemorial usage, but would completely exclude it.

[*Latin ed. p. 169*]

"LIII. DEFENS IO EPISCOPI PUTEOLANI.

Since the difficulties presented do not at all undermine his thesis, the orator demonstrates that it is necessary to conclude that the matter pertains to the full jurisdiction of the Archbishop of Naples. The defender divided his argument into two main parts: in the first, he affirmed the jurisdiction of the Bishop throughout the entire territory and within the church of Saint Mary, free from scandal; in the second, he addressed the offenses of the Archbishop.

And addressing the first point of discussion, he recalled that two titles

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are to be considered in asserting ecclesiastical jurisdiction: one expressly derived from a revealed privilege of the Holy See, and the other presumed from a possession of one hundred years. He further argued that to the possessor, just as in other civil matters, it is permissible to allege whatever is possible to defend the right or jurisdiction that he and his predecessors have held for so long, without complaint. Grotius, *De jure belli et pacis*, book 2, chapter 4, section 7; Cardinal Bellarmine, *De alienatione*, discourse 3, number 9. Indeed, *centenaria* does not remain within the limits of mere possession, but also grants to the possessor a valid title, expressly recognized, which lawyers call – the better of the two. For the *centenaria* implies an original concession in the line of presumption, an Apostolic privilege of confirmation, a legitimate agreement between the parties, and a valid alteration of the prior concession, and indeed, by presumption of law and by the law of nations. Politi, *Dissertationes selectae*, volume 4, number 17, on *translatio*. No proof is admitted against it. Pitoni, *De controversiis patronatus*, allegation 9, number 10. It is evident of bad faith. Calvin, *De aequitate*, book 2, chapter 101, number 135. It also affects those coming under proper law. The Rota in Camerata, in its decree of April 30, 1781, before Flangini, section 3. It operates in matters of faculty. Tiraquello, *De retractatione conventionum*, section 1, gloss 2, volume 25. And it prevails over the judgment of the Holy Rota in the decision *Calaguritanus*, January 30, 1756, before Figueroa, final section: ”sententiis, reiudicatis et melioribus titulis ipsa fundatione.”

[*Latin ed. p. 170*]

170. Furthermore, concerning jurisdiction, it is equal in perpetuity, as regards the acquisition of the title, that is to say, the peaceful possession of a thing or right, of which there is no memory of disturbance. Both grant to the possessor the better title, without proof to the contrary, based on the presumption they have by law, as Piton, in *De controversiis patronorum*, alleges, section 59, number 47 and following. Now, the Orator states that there are four periods to be distinguished concerning the possession of the Church of Quarti and of the Church of Saint Mary, on the part of the Bishop of Pozzuoli, who, after the volcanic eruption of the year 1538, which destroyed almost half of Pozzuoli, cannot present an explicit title. The first period extends from the year 1243 to 1692, during which the Bishops of Pozzuoli peacefully exercised their possession for a period of four centuries, without disturbance from the Neapolitan Curia, until the possession was confirmed by the Holy See. The second period extends from the year 1692 to 1751, and comprises approximately sixty years of disturbances on the part of the Neapolitan Curia, against which the Bishops protested. The third period extends from the year 1751 to the year 1808, during which the Bishop was restored to his possession by a Delegate of the Holy See, and he peacefully enjoyed it until the sentence of the French Commission of the

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year 1808, which divided the territory between the Bishop and the Archbishop. The fourth period encompasses the years from 1808 to the present: during this period, the possession of the Church and half of the territory of Quarti has been continuously maintained by the Bishop of Pozzuoli, as had been decreed by the illegitimate decision of the year 1808. In the first period, it is said that the Church of Saint Mary, Free from Scandals, was consecrated by Peter, Bishop of Pozzuoli, in the presence of several Bishops and the Archbishop of Naples, as is attested by a stone then placed in the wall of the Church, which bears the inscription: "Of our Pozzuoli Diocese," of which stone the sacred Visitations of the years 1601, 1655, and 1676 speak. Following this, from the year 1538, frequent donations of benefices were made to the Church by the Bishop of Pozzuoli to its Rectors.

[*Latin ed. p. 171*]

JURISDICTION* 471: "To the Church authorities, sacred visitations, deputations of the Holy See's representative for the assessment of the goods of the benefice, and other jurisdictional acts exercised throughout the territory. These acts were initiated by the Bishops from the consecration of the Church, and after a long period, were resumed in the year 1538; for although, due to the volcanic eruption of the same year, almost half of Puteolana, together with the Episcopal Archive, was burned, it cannot be asserted that it was destroyed by force majeure and therefore nullified. However, it is established in law that, if prior possession is proven, it is always presumed to have continued in the same manner, unless it is shown that someone else possessed it during that very time, with causes for the change of possession, as explained in Politi, *dissertatio selectior de jure*, 2 *de transad*, no. 10. More frequent and constantly increasing acts concerning Puteolana occurred from the year 1500 to 1692, namely, edicts or notifications from the Bishops regarding matters to be carried out in the Church and territory of Quarto, Synods, information requested by the Holy See from the Bishop, executions of decrees, the payment of funeral expenses by the inhabitants of Quarto to the Chapter of Puteolana, descriptions in the books of baptisms, deaths, and marriages of Planura, within the Diocese of Puteolana, under whose parochial territory Quarto is located, and finally, sacramental confessions of Bishops and other priests appointed by him in that very Church. Among so many jurisdictional acts of the Bishops, and also those that clearly state that Quarto and its Church of Saint Mary are under the jurisdiction of Puteolana, which are found in the records of the Holy See and the Curia, we find: first, the sacred visitations, real and personal, in the Church, which, since they are the most important acts of the Bishop's ordinary jurisdiction, are particularly noteworthy, especially if the prelates, as in this case, have also used judicial acts, such as summoning, appointing, and imposing fines; second, reports made at the threshold [of the Holy See], in which the condition of the Diocese is described; third, the

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collation of the benefice of Saint Mary before the erection of the Convent of Coloritarum; fourth, the appointments of the Vicarius Foraneus of Quarto and the Masters of the Church of Saint Mary; fifth, the concession..."

[*Latin ed. p. 172*]

172 The Convent, which falls under the jurisdiction, is located near the church that was established in the year 1627 by the superiors of the Order of Discalced Carmelites, who promised the superiors to perpetually offer an annual offering of wax, as a sign of their submission, and also to place a stone above the door of the church, in commemoration of the grant made to them in the year 1627 by the Bishop of the Church. Another stone of consecration was also preserved. In the seventh year, a delegation was sent from the Holy See on behalf of the Bishop of Puteoli, for the suppression of the Convent of the Carmelites. In the eighth year, successive appointments of Rectors of the Church were made by the Bishops, after the Carmelites had departed, with the faculty also to administer the sacraments. In the ninth year, a decree was issued in the year 1658 against Francis Lauro, the treasurer of Marano, for disturbing the jurisdiction of the Bishop in the exhumation of Catherine Serrentino, for removing the keys of the church by a hermit, and for other offenses; and also a definitive mandate from the Prefect of the Camera in the year 1660, whereby the Bishop was preserved in the memorable possession of his jurisdiction. Therefore, towards the end of this first period, which concludes in the year 1792, when the Archbishop of Naples usurped the jurisdiction of the Church of Saint Mary, and carried out the first canonical visitation therein, the title presumed by the Bishop, arising from his long-standing possession, without contradiction in Naples, had already been established. If one were only to count the acts of continuous and never-interrupted possession from that year 1538 to 1692, without the interference of the Archbishop, then the Bishop possessed a title of more than a hundred years, within those one hundred and fifty-eight years of possession. It is not necessary to mention that the Archbishop visited the Church of Saint Mary in the year 1692, at the beginning of the second period, and exercised other acts of jurisdiction, for, besides the fact that the Archbishop attempted to invade the jurisdiction of the Bishop, during the vacancy of the See of the Diocese of Puteoli in the year 1692, and persevered in this invasion through subsequent vacancies of the same See, the Defender maintained that this title, arising from the memorable or centennial possession, could not be destroyed, unless...

[*Latin ed. p. 173*]

SECTION 173. Another hundred-year period, completely and entirely established by Piton, in *Disceptationes Ecclesiasticæ*, number 9, paragraph 29, and in *De Controversiis Patronorum*, number 10, paragraph 285. Considering the third and fourth epochs of the Church's possession of

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the territory of Quarti, it is clear that the Bishop of Galiani issued a decree, following the order of the second suppression of the Olivetans, by the Bull *Assidua Pastoralis Officii* of Pope Benedict XIV in the year 1751, by which the Church was restored and simultaneously specially entrusted to the Bishop, the Ordinary of Quarti, along with the decrees for its maintenance in possession. Therefore, in virtue of this decree and for the purpose of maintenance, perpetually, in the absence and silence of the Archbishop, from the year 1751 to 1808, the Bishop of Puteoli resumed his acts of jurisdiction, namely, he began inventories of property, granted licenses for festivals, appointed chaplains and confessors, appointed hermits, carried out canonical visitations, and administered the sacraments of orders and confirmation in that very church, without anyone objecting. Thus, due to the remarkable, or hundred-year, favor of the Bishop of Puteoli at the end of the first epoch, in the year 1692, the Archbishop was unable to remove his jurisdiction from that territory from the year 1692 to 1751, during a time of disturbances, because, considering them individually, only fifty-nine years had elapsed. Nor was it possible to remove it from the year 1808 to 1877, during a time of a contentious dispute, because then only sixty-nine years had elapsed, not of the Church's possession, but only of half the territory of Quarti. A case similar to this one was formerly decided by Saint Mota in the *Decisions Surrentina* concerning maintenance, on May 4, 1692, before Scotto, and at that time, even in the absence of an explicit title, it was affirmed that, in determining ecclesiastical jurisdiction, the presumption should be considered: that this town had ancient declarations, which, in very ancient times, would suffice; canonical visitations, commands against the subjects; the execution of briefs and the obedience rendered; that contrary acts, fewer in number and of shorter duration, could not destroy the previous acts and those already completed, and which conferred upon the possessor a legitimate title.

[*Latin ed. p. 174*]

174. JURISDICTION. It can never be overlooked that the jurisdiction over half of the territory and the Church of Quarti was a matter of contention between the parties. The Pastoral Visitation of the year 1601 by the Prelate Vairo stated that the entire territory belonged to the Bishop of Puteoli, who was then exercising jurisdiction – over the entire territory of Quarti and the coastal areas of Talli Marani and Bellovedere. The proposal for a division, which was carried out in 1808 by a Commission of the French Government, was a transgression that harmed justice and did not satisfy the litigants. Therefore, after the decision of the Commission of the French Government was annulled by the judgment of the Order, the Bishop, as requested, was obligated to exercise jurisdiction henceforth over the entire territory of Quarti and the Church, and to settle any disputes arising in that territory.

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Proceeding from this point, the Advocate, in the second section of his defense, addressed the objections raised by the Archbishop, stating that some of these objections were contradicted by documents that constituted the memorable or centennial history of the Bishop, while others mutually confirmed the Bishop's jurisdiction, refuting the opposing claims. Regarding the offenses against the monuments of the Bishop, the Archbishop first asserted that the commemorative stone of the dedication of the Church in the year 1243 was apocryphal. However, the Advocate argues that it does not follow that the Archbishop Pignatelli could have ordered its removal in the Visitation of the year 1692, because if it was apocryphal for him, for others it might have been of proven faith. Public monuments, even those placed in dispute, are never erased. Furthermore, if the Church had always been, as claimed, under the jurisdiction of the Archbishop, in the town of Scopi, how could an apocryphal stone have been affixed to the wall of the Church, indicating a different jurisdiction of Puteoli, as is constantly recorded in the sacred Visitations of Puteoli in the years 1601, 1655, and 1678?

The second suppression of the Coloritari by the Archbishop is not contested, but rather is explained by the contextual restoration of the Church in the year 1751 by the Prelate Galiani, the Bishop of Puteoli, in these words: "The Church of Saint Mary should be kept free from scandals and commended forever to the Most Illustrious and..."

[*Latin ed. p. 175*]

JURISDICTIONIS 175. "To the Most Reverend Lord Bishop of Puteoli, and therefore, the records of consignment and the notes concerning the sacred furnishings and the property of the Church itself are transmitted to him; as if the Church itself were simply entrusted to him as a Commendatory, preserving the jurisdiction of the Ordinary of Naples, regarding what exists in the Church. However, it is not admitted that there are goods which the Commendatory ought to administer, without which the Commendatory cannot function (for everything has been granted to the Royal Hospital of the Poor in Naples), that the Archbishop has remained the Ordinary since the year 1751, while, conversely, he has been perpetually absent from the Church. On the contrary, the Bishop of Puteoli has exclusively governed the Church, visiting it, appointing chaplains, issuing orders, restoring it, administering the sacraments, and sustaining legal actions on its behalf. Therefore, with these words – 'to be maintained and commended' – the Apostolic Delegate Galiano did nothing other than to entrust, in the absence of the Colorites, the care of the Church and its Convent to the Ordinary, the Bishop of Puteoli, in order to maintain him, as is also expressly stated, in his ancient rights. The addition of the commendatory was, in a certain sense, a more liberal protection imposed upon the pastor, which the Church located in that area required, given also the abandonment by

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religious men. And then, in summary, Galiano renewed what the Holy See had done in the first suppression of the Convent, likewise entrusting, with the force of the Constitution – *Instaurandae* – the Church with its Ordinary Convent to the Bishop of Puteoli. Finally, the Orator, descending to the arguments of the Archbishop, by which he defends his jurisdiction over Quarto and the Church, states that there are three: the aggregation of the Church of Cumae, to which Quarto formerly belonged, to the Archdiocese of Naples; the dependence of Quarto on civil matters to Marano, a town in the Diocese of Naples; and the exercise of numerous jurisdictional acts over the place for a long time. Regarding the aggregation of the Church of Cumae, the Defender observes that two things must be demonstrated simultaneously by the opponent: that Quarto formerly formed part of..."

[*Latin ed. p. 176*]

176. The jurisdiction of the Diocese of Cumae: It has been stated that the Diocese of Cumae was originally given to Naples. However, this is extremely difficult, indeed impossible; for, even if it is conceded that, at one time, Cumae belonged to Naples, grave authorities report that the Dioceses of Cumae and Misene were destroyed around the year 1207, and that their remnants were transferred here and there. The Metropolitan See of Naples possessed property: the rights and privileges of the Chapters were paid to Naples and Aversa; the territory in spiritual matters belonged to the Bishop of Puteoli. But, even if it is conceded that Cumae passed to Naples and that a portion of Cumae belonged to Naples, it is certain that Cumae was destroyed in the year 1207. However, since the Bishop of Puteoli has continuously held this jurisdiction from the year 1223, or even from the year 1538, until the year 1692, it is certain that Naples, from this later possession, and with a better title derived from the world, no longer has an Archbishop, but a Bishop, the ancient title of aggregated status having been abolished. Furthermore, the portion of Cumae is now only subject to the civil authority of the Municipality of Marano, and this does not, in any way, benefit the Diocese of Naples, because, as the law clearly states, chapter 1, temporal boundaries never extend to spiritual matters. One is a civil jurisdiction, the other a pontifical jurisdiction; and it is stronger if, as in this case, the ecclesiastical boundary, based on a presumed title from the year 1243 or 1538, precedes the civil one by a long time: for, in fact, the civil aggregation of Marano to Cumae occurred by decree of the Royal Chamber in the year 1643. Therefore, it is clear that, in the year 1692, the Bishop of Puteoli, with a legitimate title derived from an ancient, or even a centennial, right, could only have the title abolished, and the jurisdiction changed, by a later centennial favor of the Archbishop. Indeed, the Archbishop entered the Church and territory of Marano in the year 1692, and left in the year 1751, when the Apostolic Delegate Galiani, after expelling the monks from the monastery, restored the Church to its previous state, and commended

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it.

[*Latin ed. p. 177*]

JURISDICTIONIS i 77. To the Ordinary of the place, the Bishop of Puteoli. Therefore, at that time, when he departed, fifty-nine years of possession had elapsed, possession also acquired in bad faith, by removing stones existing in the Church, over the jurisdiction of the Bishop, during the vacancy of the See of Puteoli, and amidst constant protests from the Bishops, who also handed over all original documents, which were recognized as genuine by the Fiscal of the Episcopal Curia of Autella. Subsequently, for half a century and more, from the year 1751 to 1808, the Bishop of Puteoli alone stood in possession of the entire territory and Church. The Archbishop began again to possess half of the territory, excluding the Church of Saint Mary, Free from Scandal, in the year 1808, by decree of the Commission of the French Government. But again, he did not possess it, except for sixty-nine years, until the day of the introduction of this judgment, by which, due to the contradiction of the Antistite of Puteoli, his possession, which was not complete, began to waver before the Holy Order. Therefore, neither from the first, nor from this second possession, did he acquire any centennial that would destroy that of the Bishop. After briefly considering the lengthy writings of the defenders, the following was proposed: to clarify the doubt as to whether, and in whose favor, the jurisdiction exists in this case. RESOLUTION. The Sacred Congregation, having carefully considered the matter, responded on April 22nd: delayed; and on June 17th, 1882, decided to respond: "Affirmatively, in favor of the Bishop of Puteoli." FROM WHICH IT IS UNDERSTOOD: I. That ecclesiastical jurisdiction can be claimed by a double title: namely, by an expressed title, which is from a declared privilege (Apostolic Documents, Vol. XV, page 5, section L XXII, 12).

[*Latin ed. p. 178*]

478. The jurisdiction of the metropolitan See arises; or it is derived by presumed title, either from a possession of one hundred years, or from an immemorial possession (I). II. In the absence of an express title, it can be alleged that a certain possessor, endowed with a presumed title, holds a better title than any other in the world, in order to maintain his right or jurisdiction; provided that he and his predecessors have held it for so long without complaint. III. In the case before us, it appears that the defender was able to demonstrate that he possessed a presumed title derived from an immemorial or centennial possession, as the Bishop of Puteoli: and that, during this time, he exercised all the ordinary acts of jurisdiction, such as, among others, canonical visitations, reports to the Holy See, and the collation of the benefice of Saint Mary. IV. A presumed title of possession, derived from a centennial or immemorial possession, cannot be extinguished

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except by another centennial possession, absolute in all its elements.

REGARDING THE RIGHT TO CARRY THE CROSS AND PRECEDENCE.

On April 22, 1882. The priest Ambrose, pastor of the parish of Saint Januarius in the city of N., presented to the Sacred Congregation of the Council a petition, dated April 12, 1878, in which he stated that the Chapter of the Collegiate Church of Saint Mary Major claims the right to associate with the faithful who have died, belonging to any parish within the same city, and to claim precedence from the pastors of the deceased. Furthermore, the aforementioned pastor, knowing the practices of this Chapter, believes that such actions are contrary not only to the decrees of the canons and the synodal laws, but also to established custom, and that they will inevitably be the cause of disputes and discord.

COMPENDIUM OF THE CASE.

(1) Regarding the force of centennial and immemorial possessions, see Volume XIV, page 514.

[*Latin ed. p. 179*]

REGARDING THE RIGHT TO CARRY THE CROSS AND PRECEDENCE: 179. He vigorously defended the following points, so that the Collegiate Chapter of the Church would be contained within the limits established by the canons, by the synodal laws, and finally, by custom. In the funerals of his parishioners, he maintained that he had the right to carry the cross, in accordance with the Roman Ritual, the laws of his diocese, and numerous decrees issued by the Sacred Congregations on this matter. He asserted that the Roman Ritual itself granted him this right, stating that, speaking of funerals, under the heading "Order of the Funeral," it says: "The Parish Priest, wearing a surplice and a black or even a rain cloak of the same color, together with a Cleric carrying the Cross and another carrying blessed water, proceeds to the house of the deceased." He argued that this was consistent with the last Synod held in 1791, which in Chapter XI, § XII, prescribed the following regarding this matter: "The Parish Priest shall determine the hour at which the body is to be carried out; and when the appointed time arrives, all those who have been invited by the heirs of the deceased to attend the funeral shall assemble in the Parish Church, and from there, they shall proceed processionally to the house of the deceased, under a single cross of the burying church." This right was confirmed by a decree of the Bishop in the year 1826, which forbade any Chapters, whether of the city or of the diocese, even those of great renown, under penalty of one gold scudo for each offense, from carrying their own mortuary cross, if the Canons were invited by the heirs

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of a deceased person to participate in the funeral and to bury him in their Parish Church, ordering that they should proceed processionally under a single cross of the burying Parish Church. This decree was confirmed by the Sacred Congregation, to which the Canons had appealed, with the response that the Orators should obey the decree of the Bishop, as it was in accordance with the decrees of the Sacred Congregations and the synodal constitutions. Numerous defenses were presented in support of the Parish Priest.

[*Latin ed. p. 180*]

180 CONCERNING THE RIGHT TO CARRY THE CROSS AND PRECEDENCE: The resolutions of the Holy Congregations, and those enumerated by Ferraris in his work under the word "Crux" (Cross), number 13, could establish this. Indeed, the Sacred Congregation of Rites and the Supreme Sacred Congregations, in Barensi, on July 29, 1616, and in Valencia, on June 14, 1647, and often elsewhere, declared: "Only the cross of that Church is to be carried at funerals, in which the deceased is to be buried." The same was declared by the Sacred Congregation of Rites in Narniensi, on September 30, 1614, in Andriensi, on November 22, 1631, in Varensi Terrae Melagri, on August 2, 1631, and in Messanensi, on February 12, 1653, with these words: "At funerals, only the cross of that Church is to be carried to which the body is transferred; after which, those of that Church ought immediately to follow, and then the others, according to seniority." Thus, Pignatelli reports, volume 6, Consultations, 58, number 13; and in volume 8, Consultations, 83, number 175, he also cites a decree of the Sacred Congregation, stating these very words: "On January 17, 1682, the Sacred Congregation declared that the cross to be carried is to be that of the Church to which the funeral procession is going, and that it is to be carried by a cleric of that same Church, after the confratres, before the clergy, and thus it commanded, etc." In other words, if one exception is made, namely, when the Chapter of the Cathedral Church participates in the funeral procession, because then, as Monacelli states, book 1, title 5, formula 6, number 37, and Ferraris in the aforementioned work, under the word "Crux," number 14, and other authors generally, all should proceed under that one cross to the Church where the burial takes place; in all other cases that may occur, the only cross to be carried must always be that of the Church to which the funeral procession is going. Furthermore, the parish priest can claim precedence in the funerals of his parishioners before the Chapter of a collegiate church, according to the Roman Ritual, where the order of the funeral rites is prescribed, and where the parish priest is given a more honorable place in the funeral processions of his parishioners. However, through several witnesses, the parish priest has also demonstrated that the exercise of this right is confirmed by custom, which is unusual in that

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diocese.

[*Latin ed. p. 181*]

REGARDING THE RIGHT TO CARRY THE CROSS AND PRECEDENCE 181 In matters of this nature, the force of custom is so great that it establishes everything in the matter of precedence, as the Rota Decis. 781, no. 5, recent, part 18, decis. 232, no. 2, cor.; and decis. 102, no. 17 and 18, part 10, recent, attest. - "In matters concerning precedence, a long-standing custom must be observed, even if it is contrary to common law." Furthermore, the Parish Priest has declared that such a custom must be observed even more strongly in the present case, because it concerns an observance that is not contrary to common law, but is, on the contrary, most in conformity with it, since it is based on the prescriptions of the Roman Ritual. DEFENSE OF THE CHAPTER. However, the Canons of the Collegiate Church of Saint Mary Major have noted that in a funeral procession to which they are invited by the heirs of the deceased, only they have the right to carry the cross, under which the Parish Priest is obliged to walk, whether the deceased or his heirs have chosen the Collegiate Church or their own parish church for the funeral rites. To demonstrate this, they present, above all, the commonly held belief in law that dignity must be kept in mind in resolving such matters, so that the more worthy are always preferred to the less worthy. Having established that the Collegiate Church Chapter, especially a distinguished one, is more worthy than the College of Parish Priests, the Canons spontaneously declared that the Collegiate Chapter, whenever invited to participate in a funeral, has the right to carry its own funeral cross, under which the Parish Priest of the deceased must also walk, even if the deceased is to be carried to his own parish church. This jurisprudence does not seem to be foreign to the practice of the Holy See, as clearly appears from Derthonen. Iurium Parochialium, December 7, 1720. As for custom, it is clear from the information provided by the Bishop that it has been established in favor of the Collegiate Chapter up to the year 1825. Indeed, the Bishop reports that the Canons at that time...

[*Latin ed. p. 182*]

182 Regarding the offering of the Cross and the precedence of time, contrary to the decree of the Episcopal Curia prohibiting the presentation of the Cross by the Collegiate Church at funerals, the Collegiate Church rose up in opposition, because they felt that the abrogation of their own custom had been unjustly sanctioned by this decree. However, it is more clearly established from the Sacred Congregation that the Chapter has jurisdiction over this matter, as reported by Pignatelli, volume 6, number 1 – there – "The Sacred Congregation decreed and declared that in funerals, only one Cross should be used, that of the church to which the body is brought, unless the Chapter of the Cathedral or Collegiate Church is present; in

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which case, the Chapter's Cross must be used." But, setting aside all other considerations, the Canons believe that attention should be given to what Ferraris has written on this matter, under the word "Crux" (Cross), numbers 4, 14, and 15, where, speaking of the elevation of the Cross at funerals, he states that it has been resolved by the Sacred Congregation that all those accompanying the funeral procession should walk under the single Cross of the church to which the body is being brought for burial, unless the Chapter of the Cathedral or Collegiate Church is present. Moreover, even granting that all those invited to accompany the funeral procession should walk under the single Cross of the parish church, when the funeral is to be celebrated in the deceased's own parish, nevertheless, the Chapter maintains that the right to elevate the Cross belongs to it, when the deceased or his heirs have chosen the Collegiate Church of Saint Mary Major in their own parish for the celebration of the funeral rites, as often happens for reasons of devotion. For in this Collegiate Church there is a sanctuary dedicated to the Blessed Virgin Mary. Since such a right is both established by the synodal constitutions of the diocese, chapter 11, paragraph 12, and by numerous resolutions of the Sacred Congregation, it is advisable to follow this jurisprudence, as the constant practice of the tribunals suggests, apart from the laws of the diocese. Indeed, the Sacred Congregation, in Sabina, on January 29, 1735, decreed that the Archpriest, when accompanying the body to the aforementioned church of the Carmelites, should walk under the single Cross of that burying place, and should not...

[*Latin ed. p. 183*]

OF THE RIGHT TO CARRY THE CROSS AND HAVE PRECEDENCE

183. To elevate one's own cross and thus to proceed before both. This was decreed in Romana on the day of the funeral, January 10, 1682. The resolutions of the Sacred Congregation of Councils agree with the decrees issued by the Holy Roman Church on this matter, as can be seen in the act of Balneoregion of April 11, 1840, in which it was established that the right to carry the cross belongs "to the Church to which the deceased is brought, as has been decreed many times," and especially in the decree of the Congregation of Rites of September 26, 1862, in which it states, "if a collegiate chapter is involved, the right to carry the cross belongs to it, according to the general decree of July 6, 1661." From all that has been stated, it seems that the right to elevate one's own cross belongs to the collegiate chapter of the Church, as it is more distinguished than a parish, whenever the heirs of the deceased invite it to funeral processions; or, if this right does not certainly belong to it, then when the bodies of the deceased are brought to the collegiate church for funeral rites. After these points, the chapter of Grado, in the second doubt, argued that the right to precedence should be granted to it before the parish priests, especially for these two reasons. Firstly, because the collegiate chapter is distinguished, to which a

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higher dignity is assigned, and which must be held in greater honor than a simple parish priest. Indeed, in matters of precedence, dignity must be considered first, so that those of higher rank are given a place of honor, as taught by Barbosa in *Summa Apostolica*, title *De Praecedentia*, number 2. The chapter also claims the right to precedence based on an ancient custom, which governs all matters of precedence. Many witnesses have testified under oath that the chapter has enjoyed this right of precedence from time immemorial. To all of this must be added the opinion of the Ordinary, who believes that the right to precedence belongs to the aforementioned collegiate chapter, as it is of higher rank in the ecclesiastical hierarchy, as stated by Ferraris in *V. Parochus*, article 2, number 63, and in *V. Praecedentia*, numbers 7 and 69. If, therefore, the chapter of the Church of Saint Mary is more distinguished than the parish of the College of Priests, and if from a time that is beyond memory...

[*Latin ed. p. 184*]

184 Concerning the right to carry the cross and precedence, it is well known that the right of precedence in funerals has always been granted to all Parish Priests; and it is fitting that this Chapter should maintain this right, as if it were its own. Furthermore, the matters mentioned above, which were presented in favor of the Parish Priests from the Roman Ritual, are relevant: as Barbosa, in *De Officiis et Potestatibus Parochi*, part 1, chapter 9, number 11, states: "With regard to the Roman Ritual," he responds that "the priest has a place among the presbyters of that order, who do not have such precedence over others; therefore, he is not a Canon of a collegiate church," as also stated by Stephanus Gratianus in *Disputationes Forenses*, volume II, chapter 298, number 83, and volume III, chapter 492. Having stated these things, the same author, in the aforementioned passage, concludes: "I say that the Parish Priest ought to precede by reason of his office, when he is among the superiors. Also, that while he is walking along the road, he does not seem to be exercising his office, but rather associating with others." Nor are the decrees of the Holy Ritual Congregation to be held in higher regard, which seem to favor the Parish Priest's prayers, if indeed Barbosa himself masterfully refutes them in the aforementioned passage: "Regarding that land of Saxiferrati, where it seems to be declared that the priest or curate, or prior, who carries the pallium, and to whose church the funeral is carried, must precede all others, and thus also the Canons of Collegiate Churches, it can be responded that this does not speak of precedence when the funeral is carried to the church of the one who carries the pallium, but rather when the office is performed in his own church, in which he ought to have precedence. Regarding the aforementioned Eugubine, it is responded that it applies to the curate of the cathedral, and to the curate of the monastery of the Olivetan monks, but not to the chapter of the collegiate church."

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With these things established, the following points must be clarified: In funerals in which the chapter of a collegiate church is present, or when the deceased is brought to his own parish...

[*Latin ed. p. 185*]

REGARDING THE CARRYING OF THE CROSS AND PRECEDENCE 18 & whether it is brought to the Collegiate Church, the right belongs to the Parish Priest to raise his own cross in that case. II. Whether, in such funerals, precedence is due to the Parish Priest before the Chapter of the Collegiate Church in that case. RESOLUTION. The Sacred Ordinary Council, after deliberation on April 22, 1882, decided to respond as follows: To I: Affirmative, when the deceased is brought only to his own parish. To II: Negative. FROM WHICH YOU MAY GATHER: I That it is certain in law and in the resolutions of the Holy Congregations that only one cross should be carried in funerals, and that it should belong to the Church to which the body is transferred, unless otherwise determined by long-standing custom. II Therefore, there is no doubt that Parish Priests are legally entitled to raise the cross in the funerals of their parishioners who are brought to the parish church. III However, according to the resolutions of the Holy Congregations, there are exceptions to this rule in the case where the Chapter of a Cathedral or Collegiate Church is present in the funeral procession: in such a case, the cross of the Chapter present is raised, under which all must proceed (2). (1) See *Recole*, Vol. X IV, page 514, and following, where it is discussed in more detail what power long-standing custom has in matters of precedence. After discussion, and despite the opposition of the Parish Priests, the prerogative of the Church of the Annunciation to carry its own cross in funeral processions and associations was confirmed. Thus, two crosses can be raised in funeral processions, when the clergy of that Church are present with the Parish Priest of the deceased. In this case, the opinion of Cardinal de Luca is relevant: "The rule is that all should proceed under one cross, unless custom otherwise determines." See *Recole*, ibid., page 136. (2) Besides other declarations that could be cited, it is sufficient to mention the General Decree of the Holy Roman Congregation, reported by Gardellini under number 2103. In it, the following was asked: I. Whether the decrees repeatedly issued, "in which it was affirmed that, in funeral processions, saving the legitimate local custom, precedence must be given to the Chapter of the Collegiate Church over the Parish Priest, even of the deceased's own..." extend to a Collegiate Church recently established in the territory... against the Parish Priest of the mother church? II. And, considering that the Sacred Ordinary...

[*Latin ed. p. 186*]

186 CONCERNING THE RIGHT TO CARRY THE CROSS AND PRECEDENCE. IV. It has been seen to have been preserved in the diocese that

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the parish priest has the right to raise his own cross at funerals, which are held within his parish, even if the Chapter of the Collegiate Church is present; because this right is based on synodal constitutions and long-standing custom (1). V. In funerals at which the Chapter of the Cathedral or Collegiate Church is present, precedence must be given to the Chapter itself, as it is higher in the ecclesiastical hierarchy (2). APPROVAL OF THE STATUTE - May 20, 1882. The administration of the Sodality of the Most Holy Sacrament, established in the town of R. in the Diocese of F., has been governed by general laws from time immemorial. Matters were so regulated peacefully until the year 1827; at that time, the Vicar GENERAL SUMMARY. - It has often been declared, and it is also warned in the Roman Ritual, that in funerals, only one cross should be used, that of the church to which the body is being taken; otherwise, if the Chapter of the Cathedral or Collegiate Church is present, then the Chapter's cross must be used, so that the parish priest of the local parish should also understand this. And the Holy Congregation, after mature discussion, decreed: "The decrees issued in favor of Cathedrals and Collegiate Churches should be extended to the cases proposed, both with regard to precedence, and with regard to the cross." (1) In addition to the long-standing custom and diocesan constitutions, there was also a decree from the Bishop confirming this right for the parish priests, which was issued in the year 1526; and this matter has passed into judgment. As Pitonius states in *Discipline Ecclesiastica*, 41, page 4, number B: "That custom which is found to be canonized by a judgment makes a status and has the force of law for the future..." Furthermore, as we have often observed, particular ecclesiastical statutes, and long-standing customs, can invalidate general laws and ceremonial regulations: Pitonius, *Discipline Ecclesiastica*, 45, number 1. Recueil, Volume X IV, page 142, note at the bottom. (2) Gardellini, under number 1505, refers to the Sabina, "Considering the discrepancies among the resolutions of the Holy Congregation, it was asked to which should precedence be given in funerals: to the proper parish priest, or to the Chapter of the Church?" And the Sacred Congregation responded: "In association with funerals, saving the legitimate custom of the place, precedence must be given to the Chapter of the Collegiate Church over the parish priest, even of the deceased's own parish."

[*Latin ed. p. 187*]

The Chapter, after hearing the Sodalitas, decreed to establish certain regulations to prevent some disputes that had arisen among the members, and to correct some faults that had crept into the administration of its affairs. However, the regulations were poorly drafted, and instead of fostering peace, they rather fueled controversies among the members and the Archpriest. Furthermore, acting as the Bishop's delegate, he considered that, according to these new regulations, he could manage all the affairs of

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the Sodalitas according to his own judgment, under penalty of nullity. To remedy these evils, the Sodalitas unanimously decided to establish its own statutes. Once these were completed, they were presented to the Bishop for approval; but he refused to grant it, saying that they were not perfect. The members of the Sodalitas, therefore, petitioned the Sacred Congregation, seeking Apostolic approval.

SYNOPTIC DISCUSSION: THE STATUTES APPEAR TO BE APPROVABLE. It is a well-established principle of law that any university or college can establish regulations concerning its own particular governance, as stated in Text 1, final, C. de iurisd. omn.; Iudic, and I. unie. ff. de Collegiis, et Corporib. illicit. I. omnes populi ff. iust. et iur. And, provided that the statute is lawful and honest, it binds all members of the college, and must be observed among them, as Bald, in lib. 1 Cod. states, and if a long custom has been established, Innocent, inc. Gratian, discept. 721 n. 22. However, such a university or college must be approved by a higher authority; otherwise, it would rather be considered a mere assembly, and would have no right to establish statutes, as Berons. cap. 7 num. 10; Mart. de Iurisdict, part. 4 contt 1 cas. 87 n. 19; Oliva de Foro Eccl. part. 3 quaest. 6 n. 5; Sanfelic. decis. 135 num. 10, point out. Nevertheless, the Confraternity of the Most Holy Sacrament has been approved by the Bishops. Therefore, it shines with a clear prerogative to establish statutes concerning those matters that pertain to the governance of the Confraternity itself. Bossus, in De Sodalit. Quaest. IV, agrees, asking whether sodalities, statutes, and orders...

[*Latin ed. p. 188*]

"Whether nations can establish statutes of approval, he responds: they can, concerning matters pertaining to their institution, and indeed with the permission of the Ordinary, according to the form of the Bull of Clement VIII, § 5. The Sacred Congregation concerning Councils, in Ulysses, June 3, 1690; *Monach. Form. Leg.*, title 6, form. it, no. 11; Title 13, form. 6, no. 5. The Bishop undertakes a futile, and indeed misguided, effort if he opposes statutes that are in accordance with Synodal Constitutions, provided he asserts this freely. Therefore, such opposition is rejected, according to the old adage. Indeed, any contradiction vanishes completely if it is compared with Chapter VII of the Diocesan Synod, concerning the Pious Associations of the Laity, with the chapter of statutes, which is titled: "Concerning the Subjection of the Association to the Authority of the Diocesan Ordinary." For it is clear that the devotion and obedience of the pious Association towards the Ordinary is complete, and that these statutes are fully in conformity with the Apostolic Constitutions promulgated on this matter. The Bishop also undertakes a fruitless task if he maintains that the alms given by the aforementioned Association, for the sake of beneficence, are contrary to the nature and character of the same confraternity. For it is the consensus of all writers on ecclesiastical matters that Associations are established to

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practice the works of piety, charity, and mercy. What more can be said? For what reason did the Association of the Sacrament, during the Italian Kingdom under Napoleon I, remain unharmed by the general law of suppression, and its goods were not taken from it from the very beginning? The reason is clear: because at that time, the aforementioned Association remained dedicated to works of beneficence, according to a decree issued on May 26, 1807, by the Royal Commissioner. Furthermore, it has also been noted that if the works of beneficence are in accordance with the nature of this Association, then anyone who sees them must consider it a duty of prudence and conscience for the administrators, who are chosen by the brethren and receive approval from the Bishop, to undertake these actions. The authority of the Bishop could only be interposed if the administrators, by their own authority, had other obligations, such as providing greater assistance for works of charity. In this case, the Bishop would be obligated to correct any abuses in the administration. But, in all cases, it has been completely fulfilled according to the will of the testators."

[*Latin ed. p. 189*]

APPROVAL OF THE STATUTES 189. The Bishop himself testifies, having seen the records of the affairs and having always approved them. But the Bishop objects: in the wills, no mention is made of subsidies; whereas, when legacies are left to the Confraternity of the Most Holy Sacrament, it is to be presumed that they are to be used for the honor of the Most Holy Sacrament. To this objection, the reply was: right reason teaches that the administrators can, in a more useful way, freely dispose of the legacies, to which no law has been imposed by the donors; furthermore, the documents of administration clearly show that a greater portion of the income is added to the divine cult, and a much smaller portion is distributed annually for charitable purposes. From what has been explained so far, it seems that the statutes are to be approved, since they are in conformity with the Apostolic Constitutions, and the Resolutions of the Holy Congregation of Bishops and Regulars in the case of Nullius Putinien, on August 21, 1584, and of the Holy Congregation Conc. Spoletana concerning the approval of the statutes of sodalities, on September 10, 1852; in Assisi, on September 10, 1785, §; in Ragusa, on April 1, 1596; in Consentia, on July 4, 1600; in Senogallia, on June 4, 1701; in Balneoregia, on January 14, 1709; and in the Rota before Buratto, Decrees 573, no. 22, and Decrees 85, no. 9, before Celso. THE STATUTES SEEM TO BE REJECTABLE. On the other hand, the Bishop argues that the statutes of the Confraternity of the Most Holy Sacrament are not worthy of approval. For, as everyone knows, laws that are contrary to the Council of Trent and to the synodal prescriptions, and to the general decrees of lay sodalities, must be completely rejected. Furthermore, the new statutes of the Confraternity seem to show this, the Bishop states. And indeed, he says, in article 3 of the statutes, it is written: "The object of the

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Confraternity is the divine cult, piety, and public works of charity." But nowhere is there mention of public charity in the legacies left in favor of this Sodality. Charity is excluded from the statutes established by the capitular vicar, and by the decrees of my two predecessors. In article 7, it is stated that the officials must remain in their office for three years; but, he says, this provision is contrary to the decrees of the Holy Congregation of Bishops and Regulars of July 18, 1594, and...

[*Latin ed. p. 190*]

190 APPROVAL OF THE STATUTES, May 11, 1616; this contradicts the Diocesan Synod and the Capitular Statutes of March 5, 1827. In articles 23 and 26, it is stated that the convocations of the brothers are valid, even in the absence of the Bishop's delegate. This contradicts the episcopal decree of 1773, which, according to ancient customs, imposes a duty on the Archpriest to assist in the meetings of the Sodality, under penalty of nullity. Furthermore, it is stipulated that the resolutions of the Sodality must be transmitted to the Bishop for approval. In article 28, it is written: "The Congregation shall participate in all matters pertaining to its sacred functions." But it does not specify what these functions are? Perhaps the judgment of the confreres will determine the number of such functions? In article 29, it is omitted that the brothers have the duty of visiting the sick confreres, and of encouraging them to approach Confession and Holy Communion? In article 33, it is improperly stated that the Sodality is subject to the vigilance of the Bishop; while it ought to be subject to his jurisdiction. According to the Council of Trent, Session 22, chapter 9, concerning reforms, "administrators" are obligated to render an account of their administration to the Ordinary. However, in this article, it is stated that an account of the administration must be given to the Bishop only to the extent that he requests it. In article 35, it is stated: "The delegate shall not give his vote in the meetings," which contradicts ancient customs, the Bishop's decree of 1773, and the Statutes of the Capitular Vicar. If this is now allowed, the consequences are to be feared, because the intention of the Sodality is to free itself from ecclesiastical authority. Finally, the Bishop observes that the new Statutes are to be entirely rejected, since they do not indicate in what acts of piety and religion the members of the Sodality ought to exercise themselves, according to the Constitution of Paul III, our Lord, § 8, and according to the Diocesan Synod. With these observations, the following question must be resolved: H) Whether the new Statutes of the Sodality under the invocation of the Most Holy Sacrament are to be approved or disapproved in all and each article, in this case.

[*Latin ed. p. 191*]

RESOLUTION REGARDING THE APPROVAL OF STATUTES 191. The Sacred Congregation, after deliberation, on May 20, 1882, decided to re-

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spond: "Affirmative. The matter is brought to the attention of the Secretary."

I. It is understood that a sodality, whether canonically erected or established with the approval of the Bishop, can draw up statutes, or a law, concerning its particular governance, which are valid by law.

II. However, in order for such statutes to have binding force, they must be examined and approved, according to the circumstances, by the Ordinary, to whom the sodality remains subject in all things and always, according to the Bull of Clement VIII, Our Lord (1).

III. Nevertheless, these laws must be in conformity with both the Apostolic Constitutions and the resolutions of the Holy Congregations, in order that they may not be deemed unworthy of approval.

FROM THE SACRED CONGREGATION FOR RITUALS OF ARGENTINA. Letters to the Bishops of Argentina, in which it is declared that Ordinaries can approve, insofar as they deem it expedient, Litany prayers for private recitation, but not for public functions.

Reverend Father, may it please you. Concerning the extent to which decisions of the Holy Apostolic See regarding the approval of Litany prayers by Ordinaries are applied in many dioceses of Germany.

(1) If the statutes or constitutions of confraternities have been confirmed by a special decree (2), (2) You, the reader, will find this decree mentioned in Volume XIII, page 91. This decree, as is now clear, has not removed from the Bishops the power to approve; as is resolved in the decree *Episcopi et Reg.*, February 17, 1605; for it does not pertain to those Litany prayers which are found in liturgical books, but the Bishops have been warned that those which the Holy See has confirmed may be changed. See Volume II, page 296, in the note, where it is stated that certain indulgences, privileges, and exemptions are granted to congregations of the Most Holy Sacrament, or to private individuals. Therefore, it is fitting to expedite the approval of Litany prayers for those purposes.

[*Latin ed. p. 192*]

192 ARGENTINENSI*. The Congregation of Sacred Rites, having issued a decree on June 1, 1880, which was subject to various interpretations, requested an authentic declaration from the same Sacred Congregation regarding certain questions, or doubts, raised concerning this matter. Furthermore, the Sacred Congregation, having carefully considered the questions presented by Your Eminence, deemed it fitting to provide the following single response: The "Monitum" to which reference is made pertains to the Litany to be recited in liturgical and public functions; however, Ordinaries may indeed examine, and, as they deem appropriate, approve other or new Litans, but only for private and extraliturgical recitation. I communicate this declaration of the Sacred Congregation to Your Emi-

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nence, for the proper performance of my office, and I earnestly pray for your lasting happiness. To the Most Reverend Lord, as Brother Bishop of ARGENTINENSI. October 29, 1882. D. CARD. BARTOLINI, Prefect of the Sacred Roman College. LAURENTIUS SALVATI, Secretary of the Sacred Roman College. DECREE of Brugensi, confirming the worship rendered to the Servant of God Charles, known as Bonus XIII, Count of Flanders. At the request of the Reverend Father August Negroni, priest of the Society of Jesus, promoter of the aforementioned cause, and after the Most Eminent and Reverend Cardinal Raphael Monaco La Valletta, promoter of the same cause, having presented the following question in the ordinary meeting of the Congregation of Sacred Rites, held today in Vatican: "Whether the sentence issued by the Most Reverend Bishop of Brugensi concerning the worship rendered from time immemorial to the aforementioned Servant of God, or concerning the case excepted from the decrees of Pope Urban VIII, is to be confirmed in the case and for the purpose in question?" The Most Eminent and Reverend Fathers, entrusted with the preservation of the sacred rites, after mature deliberation, and having heard the voice and written opinion of the Reverend Father D. Laurentius Salvati, promoter of the Holy Faith, deemed it necessary to respond: "The sentence is to be confirmed, if it pleases the Most Holy [Pope]." February 4, 1882. Having faithfully reported the foregoing to the Most Holy Lord Pope Leo XIII through the undersigned Secretary, His Holiness approved and confirmed the response of the Sacred Congregation on the 9th day of the same month and year. D. CARD. BARTOLINI, Prefect of the Sacred Roman College. [Seal] Placidus Ralli, Secretary of the Sacred Roman College.

[*Latin ed. p. 193*]

BY THE APOSTOLIC MOTU PROPRIO OF OUR MOST HOLY LORD, POPE LEO XIII; whereby a Tribunal is established within the Vatican buildings to resolve controversies that may arise, concerning contracts, with the administration of said buildings.

Given the grievous and difficult situation that has arisen following the Holy See's loss of Rome and its territories, We have deemed it necessary to provide, through a special Apostolic Motu Proprio, for the proper administration of Our affairs, issuing certain extraordinary provisions that are more appropriate for this exceptional and difficult period. In view of the hardships and difficulties that have befallen the Apostolic See, having Rome and its civil authority taken away, We have considered it fitting to consult a special Apostolic Motu Proprio, to ensure the proper order of Our administrations, and to issue certain extraordinary decrees that are deemed more suitable for the present circumstances.

"For, beyond the economic and disciplinary relationships that govern the various administrations of Our Pontifical House, controversies and disputes may arise, related to these same administrations, arising from con-

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tracts or other matters, based on claims of justice; and moreover, in such internal matters, We cannot admit the intervention of external authorities, nor do We wish in any way to obstruct the legal examination of such controversies and disputes. Therefore, We deem it necessary to provide for the proper course of justice, to the extent and in the manner permitted by the difficulties of Our situation." *Acta, Vol. XV, p. CL XXIII.*

Furthermore, beyond the economic and disciplinary relationships that govern the administrations of Our Pontifical House, controversies and disputes may arise, related to these same administrations, arising from contracts or other matters, based on claims of justice; and since, moreover, in such matters of internal order, We cannot admit the intervention of external authorities, nor do We wish in any way to obstruct the legal examination of such controversies and disputes, We deem it necessary to provide for the proper course of justice, to the extent and in the manner permitted by the difficulties of Our situation.

[*Latin ed. p. 194*]

Therefore, with the fullness of Our authority, We, by this present Motu Proprio, establish two judicial tribunals, each consisting of three Prelates to be appointed, to which all may have recourse in the first and second instances, who believe that they have actions and rights to assert against the aforementioned administrations.

These tribunals, after maturely examining the arguments presented by the parties, will pronounce the relative sentences. In the case that these sentences are not in agreement in their conclusions, a third sentence will be rendered in the third instance by convening both tribunals into one, under the presidency of the General Auditor of the Reverend Apostolic Chamber.

These dispositions shall be observed and shall have full effect until We have otherwise decreed. Our Cardinal Secretary of State is charged with establishing the practical rules for their execution.

Given from Our Apostolic Palace at the Vatican, on the 25th of May, in the year 1882, of Our Pontificate.

Leo XIII. Pope.

Leo XIII. Pope.

[*Latin ed. p. 195*]

195 EX 8. CONGREGATION! COUNCIL! DISPENSATION FROM IRREGULARITY. December 17, 1881. The priest, Eliseus, a canon of the Collegiate Church of Saint Mary Major, was afflicted by a stroke approximately three years ago, which resulted in the complete loss of use of his right arm. Consequently, he was compelled to abstain from celebrating the Holy Mass for an entire three years, thus incurring an irregularity. Since the effects of this illness persist to this day, and there is no hope that he will ever regain the use of his right hand, in the month of July of the current year, having

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presented a petition, the aforementioned canon approached the Most Holy Prince, requesting that he deign to grant him the faculty to celebrate the Sacred Rite anew, since, with the aid of his left hand and another priest who would hold the paten over the chalice, he could perform all the ceremonies of the Mass. The Bishop, upon being asked, stated that the reason for this petition was the pious desire to offer the divine sacrifice, and to avoid the expense incurred in fulfilling the obligations for which he is responsible, namely, the canonical duties and the expenses of the orator. The Bishop said that this loss might not be a grave matter in itself; but it must be considered in light of the expenses, which must be borne due to his infirmity. In order to determine how the sacred ceremonies of the Mass could be fulfilled, the Bishop entrusted the matter to the archpriest, instructing him to conduct an experiment with the orator, simulating the celebration of the Mass. After careful consideration, the archpriest reported: the right hand, by itself, is not... [The sentence is incomplete in the original Latin.]

[*Latin ed. p. 196*]

90. Regarding a DISPENSATION from IRREGULARITY, when an action or ceremony is entirely unsuitable: Likewise, the Celebrant, without assistance, cannot possibly cleanse the paten in any way; however, it is permissible if the paten, placed above the chalice, is properly handled by a Priest present. The Celebrant is able to perform the other ceremonies, partly by moving and drawing the right hand with the left, in order to bless himself and the offerings, and to bless the people at the end of Mass; partly by the left hand itself, separately, in order to bless himself with the paten and the chalice, to perform the signs of the cross with the Host over the chalice, and to break the Host. Despite these circumstances, the Bishop commended the Celebrant for the grace, so that no further affliction would be added to the afflicted priest. The Celebrant is confident of obtaining the grace, having been given the resolution by the Sacred Congregation in Goritia, regarding a dispensation from irregularity, as detailed in Volume VII, page 80; and in many other resolutions noted there.

RESOLUTION. The Sacred Congregation, after deliberation, responded on December 17, 1881: For the sake of the grace in a private oratory with the assistance of another Priest, until the illness worsens, the words are spoken with the Most Holy (1).

APPLICATION OF MISSES. May 20, 1882. Through summary prayers.

COMPENDIUM OF THE AGREEMENT. In the Archdiocesan district of C, in the year 1862, Petrus, a farmer, established in his will: "I bequeath the remainder of my goods to the parish church, for the purpose of establishing a morning Mass for Sundays and holidays, with the obligation to recite three Our Fathers for the benefactors of this church in said Mass." This fund is equivalent in value to five.

Sometimes we abstain from referring to a matter, because it returns to

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what has already been observed in similar cases when dealing with such questions.

[*Latin ed. p. 197*]

APPLICATIONIS MISSARUM 197, which amounts to fifty-four thousand marks. The wife of the aforementioned testator, Peter, had the use and fruit of this sum for the days of her life. Now, since she died last January, the question arises as to whether the parish priest is obligated to apply this endowed Mass to the intention of the founder, or not. The discussion, summarized, SEEMS THAT THE MASS IS NOT TO BE APPLIED. It seems that the parish priest is not obligated to apply the Mass founded for Sundays and feast days by the pious testator, to the intention of the founder, for the following reasons: 1. In this parish, which has four hundred and seventy parishioners, there is no priest other than the parish priest. If the parish priest were obligated to apply the endowed Mass to the intention of the founder on Sundays and feast days, during which he is obligated by the duties of his parish office to serve the parish, he would not be able to fulfill this obligation, since he cannot satisfy the endowment by celebrating the morning Mass, which he celebrates twice, by virtue of an Apostolic dispensation obtained from the Ordinary: 2. The intention of the founder was to establish a second Mass on Sundays and feast days, for the benefit of the parish, a large part of whose inhabitants live far from the parish church. For when the parish priest, by Apostolic authority, celebrated two Masses on Sundays and feast days for a time, this pleased the founder so much that he said that he wished to establish this Mass, which he subsequently did: 3. The parish priest has hitherto had revenues that were barely sufficient. Add to this, a circumstance of no small importance, which strongly suggests that the founder did not wish to impose this burden so that a Mass would be applied for his soul. Indeed, the testator, establishing this kind of feast day Mass, knew perfectly well that the parish had no other priest besides the parish priest, who had obtained the faculty to perform the sacred rites twice on feast days in order to meet the needs of the parishioners. Given this, unless you wish to say that the testator...

[*Latin ed. p. 198*]

198. It must be admitted that the institution of missals for application is impossible; it seems that the parish priest did not intend to impose an obligation on himself to celebrate Mass for the soul of the testator. It appears that the Mass is to be applied. However, the reasons mentioned above do not seem to be of such weight that it can be said that in the aforementioned testamentary clause, the foundation of Masses alone, without the obligation to apply them for the intention of the testator, is contained. It is established in law that, when interpreting the last will, rule 45 of the *Reg. iuris imp.* must be kept most prominently in mind: ”We examine the

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obscure in order to discover what is most likely." Furthermore, Benedict XIV, in his work *De Sac. Miss.*, chapter 9, number 2, states that he who establishes a benefice or chaplaincy, and imposes the obligation to celebrate Mass, but does not add a single word about applying it for his own soul, intended that it should also be applied for himself. And this likelihood is so strong, according to what is traditionally taught about the Angels in book 3, title 41, number 4, that it cannot be refuted unless very serious presumptions are presented, namely, that the founder, by ordering the celebration of Masses, left the application of them free. The Holy See has consistently followed this rule for interpreting such foundations, as can be seen in the aforementioned place cited by Benedict XIV, where he presents several resolutions, especially the well-known one in the case of Finen, regarding the application of the Sacrifice, on August 18, 1668, in which the following words are found: "From the testamentary disposition, made in ancient times, a certain chaplaincy was established by a pious testator, with the obligation for the chaplain, for the time being, to offer the Holy Sacrifice on Sundays and other festive days, without any declaration being added, for whose benefit the Sacrifice should be applied." Therefore, Bishop Finen, through the Holy Congregation, requested that it be declared whether such a Sacrifice should be applied for the soul of the testator, or whether it should be at the discretion of the chaplain, as he had hitherto found to be the case. On August 18, 1668, the Holy Congregation of the Council responded: "The Sacrifice is to be applied for the soul of the testator."

[*Latin ed. p. 199*]

APPLICATION OF MISSES 199. Indeed, in the matter under discussion, there is no serious presumption to the contrary that would suggest that the testator has left the application of the Mass free; for it makes no difference that in it, three Our Fathers are recited for the benefit of the Parish Church; because this in no way excludes the application of the Mass for the soul of the testator; rather, it presupposes it, as Pignatelli teaches in volume 3, consultation 61, numbers 9 and 15; Matheus in *Officium Ecclesiasticum*, chapter 10, number 63; Aldanus in *De Variis Applicationibus Sacrificii*, book 2, chapter 3; Faustus in *De Eucharistia*, I, 2; and others. Nor does it impede, that the testator wished to consult the convenience of the parishioners through that foundation. For this circumstance is not expressed in the aforementioned testamentary clause, and therefore it is not to be considered, since by it, the intention is to restrict the will of the testator to the detriment of himself. And even if it were expressed, it would have no validity, unless it were further proven that the foundation was established solely for the convenience of the parishioners. For, as Cardinal de Lugo says in *Disp. 21, sect. 1, no. 23 de Sac. Euch.*, "In benefices, or in other things in which the priest is obliged to celebrate only for the convenience of those who will hear Mass at that hour, it can more easily be presumed that the

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application of the sacrifice is not required, but that the priest is left free to apply it to whomever he wishes." And the Sacred Congregation has never declared the application of the Mass to be instituted for the convenience of the listeners, unless there were such circumstances, that it could reasonably be presumed that the founder had exclusively considered that convenience, as can be seen in *Collen. De Applicatione Sacrif.* in the year 1689, and in *Forcastinen* in the year 1711, in Benedict XIV, *Quaestiones Canonicae*, question 7. Furthermore, when those circumstances are lacking in the matter, it seems to be concluded that the parish priest is bound to celebrate the Mass for the soul of the founder. Having considered these things from various perspectives, it was prudent for the Most Reverend Fathers to clarify whether the parish priest is bound to apply this endowed Mass.

[*Latin ed. p. 200*]

200. RESOLUTION REGARDING THE APPLICATION OF MISSES. The Sacred Congregation, having considered the matter, on May 20, 1882, decided to respond affirmatively: "If another priest is lacking, the application of the Missa fundata is transferred to the first unhindered day within the week, provided that the matter is communicated to the Most Reverend [Ordinary]."

FROM WHICH WE MAY GATHER:

I. That the rule is general, confirmed by numerous resolutions of the Sacred Congregation, that he who founded the benefice and ordered the celebration of the Mass, also intended that it be applied to himself (1).

II. For, according to rule 114 ff. of the "reg. iur.," "In obscure cases, one usually considers what is most likely, or what usually happens."

III. That such a likelihood exists, which cannot be reduced to nothing unless very serious presumptions exist to the contrary; namely, that the founder, when establishing the Missa, left the application free.

JURISDICTION OF THE PARISH.

May 20, 1882.

SUMMARY OF THE FACTS.

From time immemorial, the parishes of the Diocese of C. have been defined by certain boundaries, and the jurisdiction of the parish of Agde extended to the monastery of Saint Lawrence, and to SpiÅ¡skÃ© Vlachy, along with the houses located there and forming said suburb, and also to the extensive contiguous territory. However, in the year 1788, by impe-

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rial decree, certain parishes were suppressed and completely disappeared, while others were given new boundaries.

(1) This rule is confirmed by the questions related in Volume III, page 525, and Volume V, page 577.

[*Latin ed. p. 201*]

OF PAROCHIAL JURISDICTION 20. Consequently, it came to pass that certain houses, including the monastery of Saint Lawrence and the area of Saint Julian, which previously belonged to the parish of Saint Agatha, were assigned to the parish of Saint Augustine, although no mention was made of the extensive area located nearby. Matters proceeded peacefully until the year 1879; however, at that time, a building was erected in this extensive area for nuns who dedicated themselves to charity in order to alleviate the miseries of people. Immediately, the question arose as to whether this building belonged to the jurisdiction of the parish priest of Saint Augustine or to that of the parish priest of Saint Agatha. The Ordinary, to whom the matter was presented, first entrusted the exercise of the parochial jurisdiction over this property to another priest, while the dispute was pending; then, after the proper legal process was completed, he ruled that the jurisdiction over the aforementioned building belonged to the parish of Saint Augustine. This decision was appealed for a time to the Holy Office. A SYNOPTIC DISCUSSION. The speaker, beginning his defense of the parish priest of Saint Augustine, first affirmed that a city, town, or village, according to its size, not only consists of buildings, but also of a territory always attached to it. This territory may be larger or smaller, depending on the order and nature of the region, but when a district is mentioned, it refers to an attached territory, as testified by Gregory X in chapter 3 concerning elections, in the 6th Cardinal Rule. De Luca in discussion 21 on benefices, number 11: Cuiac. volume 7, edition of Prat, column 1689: Cardinal Mantica in "De Coniecturis," book 7, title 2, number 35 and following. In addition to the legal meaning, an interpretation arises from the facts. The churches of this province are often far from the houses belonging to them. Moreover, a considerable distance often lies between the houses themselves within the same parish. However, since this decree treats these houses as a single body, it seems to include the buildings and the terri-

[*Latin ed. p. 202*]

SECTION 202: PAROCHIAL JURISDICTION and intervening circumstances. It must also be noted that, according to the Council of Trent, Session 25, Chapter 13, concerning reforms, the people must be divided into certain and proper parishes; hence, if there are uncertain boundaries and vacant places, the quality and nature of the proper parish may not be admitted, according to Ferraris, *Parochus*, number 12. Nor could the intention of the Provincial Superior, nor of the Bishop, have been otherwise, when,

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after deliberation, they sought to define a certain circumscription for the parishes. But if they had postponed this, they would have brought about nothing other than the seeds of endless disputes and confusion, rather than a certain and promised definition of the entire territory. For each parish priest would have found only a certain possession within the houses, while the greater part of the territory, consisting of fields, would have belonged to no parish, so that wherever a new dwelling arose, the question of boundaries would have flared up. To this is added the long-standing custom of other dioceses: for in these, the jurisdiction of each village or town includes not only the houses of the town or village, but also the territory. And it has been affirmed that the same has been practiced for centuries in the parishes of Saint Agatha and Saint Augustine, because, after the decree, the number of dwellings has doubled, and nevertheless, each parish priest, in the fields that belong to his territory, has administered the sacraments without contradiction, wherever buildings have been erected. Then he discusses the secular custom, which is the most important and evident thing that can be required in these controversies. For from the diagram, it is clear that, after the ancient houses belonging to the parish of Saint Augustine, more and more buildings were subsequently built far from them, almost to the middle of the field in question, and that the parish priest of Saint Augustine has always exercised and continues to exercise jurisdiction there. Therefore, he affirms that two things can be deduced from this secular recognition: first, that the jurisdiction, according to the decree, is not limited only to the houses, but includes the adjacent territory; second, that the territory of the parish of Saint Augustine belongs to the place where the disputed house was built.

[*Latin ed. p. 203*]

203. He also states that the most evident characteristic of the territory, and its natural boundaries, must not be overlooked. Indeed, the entire form of this extensive quadrilateral area is as follows: on three sides, the land is entirely enclosed, either by a wall or by the same wall and a stream that flows around it; and these enclosed sides are those that border the parish of Saint Agathe. One side, however, is open, and it has no access from anywhere other than from the parish of Saint Augustine. Therefore, the wall does not separate one dominion from another, but rather separates the territory of Saint Julian from the jurisdiction of Saint Agathe.

Furthermore, he asks: Why is this entire plain area, which on three sides borders foreign villages and parishes, completely enclosed and has no access except on one side, namely, from the parish of Saint Augustine? This is so that this jurisdiction may be defended throughout that entire area, and foreign intrusion may be prevented. All of this is confirmed by diocesan authority, which, even if other testimonies were lacking, should prevail over all others; *Rota decis. 69 coram Ratto n. 16*. Nor should the court be

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considered differently, as testified by *Rota decis. 368 coram Crispo n. 16*. Therefore, according to the intent and the letter of the decree, according to the custom of the diocese and the place, according to necessity and the nature of the region, according to the testimony of the Bishop and the court, the territory adheres to the parish that is erected in that village, and the land in question is contained within the village of Saint Julian, or within the parish of Saint Augustine.

The same defender, in order to address the difficulties raised by the opposing party, states: The area of *Suburbium* of Saint Julian was annexed to the parish of Saint Augustine, not through the dismemberment of the parish of Saint Agathe, but through the suppression of many parishes, and through a new demarcation of their boundaries. And therefore, no new parish was established; but six old ones ceased to exist through suppression: therefore, the union was not a dismemberment. Regarding this matter, the parish of Saint Agathe and all the others have benefited from this new demarcation, without losing anything else.

However, the pastor of Saint Agathe adds, according to the defender, that the houses and territory in question belonged to his parish, until recently: the houses were lost in the year 1788; as for the lands, nothing was explicitly stated.

[*Latin ed. p. 204*]

204 I have been under PAROCHIAL JURISDICTION; therefore, it cannot be said that either party has established a boundary. To this objection, he replied as follows: Regarding the possession of the new territory, the decree applies equally to all parishes, and it has only attached houses; it has suppressed everything else, and it has obliterated all previous possessions, establishing a new order of things. Therefore, both pastors are in the same condition, because only specific houses have been assigned to each of them. However, he stated that it cannot be considered that the pastors have jointly established a boundary regarding the fields that constitute the territory, because those who made the decisions in 1788 intended to define everything, and it cannot be claimed that they left a significant portion of the territory, consisting of fields, undefined. But if ecclesiastical authority were to resolve this doubt today, what would it be? Certainly, it would be the authority of the BISHOP, because it is the duty of the Bishop to erect and divide parishes (S. C. Trident., cap. 13, session 24, de Ref., Ferraris, voc. Parochus, art. 2, no. 10). This definition has already been established, and the parish of Saint Augustine has been assigned fields. Furthermore, an appeal from such a judgment could not be admitted, because, given the nature of neither territory, and the right of the Bishop, the pastor of Saint Agatha has lost nothing from this judgment, and he has nothing that he can rightfully claim. In addition, only the Bishop, according to established jurisprudence, has authority over pastors in those regions where certain boundaries have not

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been established for the parishes, and through suitable priests, he cares for the souls: (Annot. ad Buratt., decis. 402, no. 6, Deluca, de Regular, disc. 1, § 3, no. 43, and disc. 12, no. 10). Therefore, in this case, the Bishop exercised authority through the Archpriest of Saint Augustine, and it was not permissible for others to encroach upon that jurisdiction. DEFENSE OF THE PASTOR OF SAINT AGATHA. The advocate for this pastor argued that the Emperor's decree could not deprive the pastor of Saint Agatha of his jurisdiction over the monastery of Saint Lawrence, nor over the suburb of Saint Julian, nor over the extensive contiguous field. It is certain that all of these have belonged to the jurisdiction of the parish of Saint Agatha from the most remote times. However, a building was recently erected in this field.

[*Latin ed. p. 205*]

OF PAROCHIAL JURISDICTION 205, in which the nuns reside, it follows, spontaneously as it were, that the jurisdiction over that building belongs to the parish of St. Agatha. It is not permissible to object, based on an imperial decree, that the parochial jurisdiction over the widest area was transferred to the parish of St. Augustine; for this could not have been legitimately done. For the Emperor only proceeded to dismember the Church of St. Agatha; but the dismemberment of churches is solely a matter of ecclesiastical authority. Even if the President of the province carried this out, with the consent of the Bishop, nevertheless, without Apostolic approval, the act was in vain; for the dismemberment of parishes is comparable to the alienation of ecclesiastical property; and because the Bishop cannot do this at his own will, but only in cases expressly permitted by law; Pignatelli, vol. 4, cons. 23, n. 6; Bouix, tract. de Paroch., p. 2, cap. 4, prop. 1. - ibid. - Furthermore, it is certain, and a principle unanimously accepted by the Doctors, that it is not licit for Bishops to divide or dismember parishes, except in cases permitted by law, which, as has been noted, have not been verified in this case. The Apostolic approval, which must still be obtained, remains outstanding. Furthermore, following the argument, the defender contended that the Emperor, with his decree, although he could have done so, did not wish to subtract the widest contiguous area from the parochial jurisdiction of St. Agatha. For he decreed that, both with regard to churches, and with regard to the districts that ought to belong to each parish in the future, an attached distribution should be followed. But such an attached distribution does not signify anything other than that the districts should be assigned to a particular church, unless it mentions houses, numbers, villages, streets, and routes, and makes no mention whatsoever of the widest contiguous area; therefore, it follows spontaneously that the Emperor, with his decree, did not wish to subtract the widest disputed area from the parochial jurisdiction of St. Agatha. Therefore, neither in fact nor in law does what the opposing argument put forward hold; namely, that if the

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suburb of St. Julian was annexed to the parish of St. Augustine, the contiguous...

[*Latin ed. p. 206*]

206 Whether the territory annexed should be understood as pertaining to the parochial jurisdiction. This difficulty does not lie in the fact, because the Imperial decree states that nothing other than the houses, villages, streets, and pathways constituting the *excavium* of Saint Lawrence, and the *suburbium* of Saint Julian, which are clearly and definitively delineated by old census records compiled in the year 1757, were taken from the parochial jurisdiction of Saint Agatha, and that no mention is made of any extensive neighboring territory. Therefore, in this matter, the legal maxim "what is expressed is intended, what is not expressed is not intended" is relevant. However, the Advocate continues, the difficulty lies in the law, because the dismemberment of parochial territories, or the circumscription of parochial boundaries, are things to be avoided; therefore, a strict, rather than a broad, interpretation must be made, according to that most famous rule – "odious things are to be restricted, and favors are to be expanded" – and according to the clear text of the Extravagant, *de conces. praebend.*, chapter 22. Finally, he argues that this interpretation leads to absurdities. For it would render the boundaries of the parishes uncertain and indefinite, whereas, according to the intention of the Holy Canons and the Council of Trent, they should be certain and definite, lest disputes and confusion of jurisdictions arise, as Maschat states in book 3, title 29, paragraph 2. Therefore, once a jurisdiction has been legitimately established, it can only be taken away expressly and legitimately. Having brought the matter to this point, he argues the case for the parish priest of Saint Agatha, because he believes that, from what has been explained so far, it is evident that the Emperor, in his decree, did not intend to take the extensive territory away from the parochial jurisdiction of Saint Agatha. However, even if it were supposed that the aforementioned building is located on the boundary between the parishes of Saint Agatha and Saint Augustine, nevertheless, the opposing party's case does not succeed, if the main entrance and the more frequented access are located within the territory of the parish of Saint Agatha, as the moderator of the disputed house and the nuns themselves admit; hence, according to the clearest rules of law, the parochial jurisdiction belongs to it. Thus, Rice argues, in his *Praxis forensis*.

[*Latin ed. p. 207*]

JURISDICTIONAL PARISH 207, resolution 510. Pignatelli consulted, canon law, volume 8, section 5; Barbosa de officio, and potest, Parodi, page 2, paragraph 23, number 71. Reiffenstuel adds, from Parodi, number 20; Giraldi in additionibus Inst. canon. Maschat. The Sacred Congregation

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of Eastern Churches and Regular Canons, on May 6, 1870, in Veliterna, concerning Associations and Emoluments. If this were admitted, according to the aforementioned decree of 1788, the entire territory of the parish of Saint Augustine would have been annexed; however, the disputed house would have to be separated from that parish, because it is very distant from the church of Saint Augustine, and those who are forced to attend that parish suffer great inconvenience; Fagnan, chapter on audiences, number 14. Having explained these matters, it is concluded that the aforementioned building of the nuns should be subject to the jurisdiction of the parish of Saint Agatha, and therefore the judgment of the ecclesiastical court must be entirely overturned. Having explained these matters, the Most Reverend Fathers proposed the following question: "Whether the judgment of the ecclesiastical court should be confirmed or overturned in this case."

RESOLUTION. The Sacred Congregation, after discussion on May 20, 1882, decided to respond: "The judgment should be confirmed."

FROM WHICH YOU MAY GATHER:

I. The validity and justice of the union of parishes depend on the reasons that prompt the union itself, and on the authority of the Superior who decrees it.

II. In this matter, it seems prudent to leave the matter of the union to the wise judgment of the Bishops, as the justice of such a union must be considered in each individual case.

III. From the Council of Trent, Session 7, chapter 6, concerning Reforms.

[*Latin ed. p. 208*]

208. OF PAROCHIAL JURISDICTION: Bishops, even as legates of the Apostolic See, are permitted by law to effect unions of parishes in cases provided for by law. IV. It cannot be doubted that unions of parishes made by civil authority have been carried out with the consent of the Bishop; and therefore, their validity cannot be questioned. V. It also seems clear that neither authority has relinquished any fields or territories, or houses attached to them, when defining the boundaries of parishes, unless it is desired to open the way to the foment of lawsuits and disputes among the parish priests.

CANONICAL MAGISTRAL: On June 17, 1882, the Bishop P. having vacated the canonical magistral position in his Cathedral, convened a meeting, instructing the new canon to, in addition to the duties common to all canons, gratuitously give lectures in the Seminary regarding the subject matter and hours as determined by the Ordinary himself, according to the statutes and customs of the Cathedral. After the meeting was held, the priest Carral earned the preeminence; who, after being admitted to the legal process for the possession of the canonry, for 4 years not only taught

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sacramental theology to the students of the Seminary, but also taught ecclesiastical history on the days when the school of S. Theology was vacant, for three of those years, without receiving any remuneration other than the daily distributions of the choir. But regretting the fact, on July 15, 1881, he requested something from the Bishop for this service, asserting that he was not bound by the statutes of the Church P. to teach gratuitously. In response to these requests, the Bishop replied that in the future, the canonical magistral would be dispensed from the obligation of teaching gratuitously.

SUMMARY OF THE FACTS.

[*Latin ed. p. 209*]

The Canon, holding the magistral chair, presented his ecclesiastical history, and something would be owed to him for the years he had taught, even though, according to the statutes, he could be held liable for that as well. However, nothing should be owed to the Canon for imparting theological instruction; nor should he be relieved of this burden, which he undertook immediately upon being appointed to the magistral chair, said the Bishop. The Bishop's response did not favor the magistral Canon in his appeal to the Sacred Congregation of the Council. A Synopsis of the Defense of the Magistral Canon. The magistral Canon argued that he was in no way obligated to teach gratuitously in the seminary; and he endeavored to demonstrate this with two arguments, both derived from the statutes of the Church and from custom. Regarding the statutes, he said: when defining the obligations of a magistral Canon, the letters of the statutes must be interpreted in such a way that only those burdens which are expressly found in them should be assigned to him. Indeed, Article 22 of the statutes, which deals with this office, does not mention the burden of teaching gratuitously; therefore, it follows spontaneously that the aforementioned Canon is in no way bound to teach gratuitously in the seminary. Nor should one say that, even if this obligation is not evident from the statutes, it nevertheless follows from the edictal notices, to which the aforementioned Canon submitted, which is far from certain. Indeed, he is confident that he can completely refute this objection, noting that the Bishop's edict, which is not in conformity with the statutes, cannot be invoked as a rule of law. Although the adverb "gratuitously" is found in the Bishop's edict, it has no force, because it was not mentioned in the statutes; for the law does not give what is contrary to the law. Therefore, it is not surprising, the Canon added, that the Sacred Congregation has declared on several occasions that new burdens cannot be imposed on those who have already been appointed by the authority of the Ordinary, as Fagnanus reports in Chapter Significatum de Praeb, nos. 3 and following. Could the burden of teaching gratuitously, imposed by the Bishop through edictal letters, be valid for the magistral

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Canon? – Acts, Vol. XV, page C L XXIII, 14.

[*Latin ed. p. 210*]

210 CANONICAL MASTERS: It can then be deduced, if not directly from the letter, at least from the spirit of the statutes. It is indeed established in law that a statute must be interpreted in such a way that it does not, if possible, infringe upon the common law; *Surreptiones*, decisions 36, number 18 and following, and decisions 49, number 8, and decisions 56, number 4. Indeed, as Barbosa observed, it must always be interpreted according to the common law, which stipulates that benefits should be conferred without diminution, *Capitula*, question 3; Fagnanus, book 2, decrees, chapter "Non esset," numbers 47 and 49. Moreover, the advocate maintained that, not only from statutes, but also from custom, the right in question could be sustained. Indeed, he stated: "My predecessor, who held the chair for twenty-two years, received a fixed remuneration." Furthermore, custom is considered the best interpreter of laws, as all laws proclaim, in a friendly agreement, *Capitula*, if concerning the interpretation of the laws, chapter "Cum dilectis"; and there is no one who doubts that it should always be observed, where it prevails. Scarfantonius teaches that the custom of a particular Church, especially if, as in this case, it is in conformity with the common law, must be observed entirely, *in additionibus*, 37, number 25; *Rota coram Seraph*, decision 1025; *coram Lancetta, in Frisigen. Decanatus*, February 29, 1712. The advocate argued that the statutes do not provide sufficiently for the allowances granted to him for the time he teaches in the Seminary. The advocate, however, replied that such a provision could not be tolerated, both because it contradicts the explicit dispositions of the Council of Trent, and because it places the advocate in a worse condition than the other canons. However, the objection seems unfounded that the canonical master swore an oath to observe the statutes of the Cathedral Church, because one is not bound to swear an oath regarding an unjust thing. Indeed, there is no doubt that the matter in question concerns an unjust thing, since the advocate stated: "And thus, injustice arises, because a burden, which lacked apostolic authority, was imposed by the edict of convocation, and approved by the illustrious Bishop and Chapter, concerning the burden of..."

[*Latin ed. p. 211*]

CANONICAL MAGISTRAL 2-14: "On the day of teaching, it was not permissible for a prudent man to doubt that this should be done freely; that this should be done contrary to the law, or without the consent of the Pontiff. Having learned of this, the Canonical Magistrate, contrary to this obligation, claims that he is not bound by it, and that he does not consider himself to be bound by it under oath. And this, it seems, can be asserted with the best of reason, since it is well known in law that an oath

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should not be a bond of iniquity; Fagnanus in cap. Sicut de prob., n. 19. If, therefore, it cannot be doubted from what has been discussed so far that the Canonical Magistrate cannot be bound by the burden of teaching Sacred Theology freely, if it also seems certain that the daily distributions, for the time during which he teaches, cannot be received by right, because they were established by the Most Holy Canons present; it seems that, in place of the daily distributions, a compensation should be established, with the common consent of the Bishop and the orator, to be paid to him for the labor expended and to be expended in the future. The distributions received in advance, contrary to the sanctions of the Council of Trent, should be returned, so that they may be distributed among the Canons who were present in the choir."

DEFENSE OF THE BISHOP: "On the other hand, the Bishop argues that the Canonical Magistrate is bound to teach Sacred Theology in the Seminary freely; and he asserts that this can be deduced from the fact that this burden was imposed on the Canon in such a way that it properly constitutes the office of the Canonical Magistrate. For, according to the statutes, this burden of teaching is annexed to the canonry, and constitutes a part of his office. Now, if the duty of teaching in the Seminary is attached to the Canonical Magistrate, and constitutes, as it were, a part of his office, then the Canonical Magistrate, like a theologian and a penitentiary, for the satisfaction of the duty of his office, attached to his own benefice, is not entitled to receive any other emolument besides the daily distributions, as declared by the Holy Congregation of Councils in Anagnina, July 23, 1674; so likewise, the Canonical Magistrate—"

[*Latin ed. p. 212*]

212. The CANONICAL MAGISTRAL [professor], at the time when he teaches Sacred Theology in the Seminary, appears to be able to do nothing other than to pretend to make daily distributions. Nor does it seem that the orator can argue, based on the fact that the statutes, as can be read in the edictal documents, do not expressly prescribe that the Canonical Magisterial professor should teach gratuitously, that he is entitled to a salary for the Sacred Theology lectures, but rather, adhering to the rules of common law, it is fitting that these benefits should be extended: for the opposite consequence would more easily follow from the silence of the statutes. And indeed, in article 22 of the statutes, mention is made of exemptions and privileges, which the Prebendaries must enjoy for the new burden of teaching, so that the implementation of that same burden may be made easier. But since complete silence is observed regarding remuneration, he is therefore excluded from these privileges, and in no way can he be included among them. For if the intention had been to grant remuneration to these canonical professors, it would have been noted among the other privileges, as something that would bring greater benefits to the Prebendaries. There-

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fore, from this silence, the intention opposed to this remuneration seems to be inferred. However, the Bishop adds, it is not necessary to resort to tricks and conjectures to demonstrate that the silence of the statutes benefits the orator in nothing. For not only the Bishop himself, but also all those who participated in the drafting of the statutes, have always been certain that the Canonical Magisterial professor, by virtue of the new imposition, is bound to the gratuitous performance of the burden of teaching. But something else is brought up by the orator, namely, that his predecessor received a salary for a period of 22 years, for the burden imposed upon him of teaching dogmatic theology in the Seminary. Indeed, it has been ascertained that at the time when that man taught Sacred Theology to the Seminary students, that burden was not imposed upon the Magisterial Prebendary, as it appears to be the case now. However, not only from the statutes by which the Cathedral Church of P. is governed, but also in accordance with the force of the edictal documents, the orator is obliged to teach gratuitously, because this...

[*Latin ed. p. 213*]

CANONICAL MASTER 213 freely accepted the obligation, and fulfilled it completely throughout the entire four-year period, without any objection. It is indeed clear that no one can exempt themselves from the satisfaction of that obligation, to whom it was freely and voluntarily imposed. It is, therefore, futile for this advocate to attempt to invalidate such edicts, under the pretext that they are contrary to common law, when, as has been demonstrated to the highest degree of evidence from the aforementioned statements, the aforementioned edicts are perfectly in conformity with the censure and practice of the Sacred Canons: namely, the Sacred Congregation of Councils, which, in Anagnina, on the 23rd of July, 1674, declared that canonical masters who are bound to fulfill their duties in providing instruction, cannot claim any particular stipend, other than the daily distributions. Given these circumstances, everyone can easily understand that the canonical master is obligated to be content with only the daily distributions, and with the customary allowances granted to canons who are actually present in the choir, for the reason that he teaches sacred theology in the seminary. Therefore, the Bishop concludes that the advocate's prayers, both for obtaining a salary in place of the daily distributions, and for dividing the distributions received among the canons who were actually present in the choir, should be rejected outright. With these and other considerations in mind, the following points are to be settled: 1. Does the canonical master have the right to receive a salary for the work he performs in the seminary, or rather, should he only receive the daily distributions in this case? And to this, the answer is: affirmatively to the first part, and

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negatively to the second.

[*Latin ed. p. 214*]

214. CANONICAL EDICT REGARDING DISTRIBUTIONS. Question: How should provisions be made for distributions, concerning sums received in the past, in this case? RESOLUTION. The Sacred Congregation, after discussion on June 17, 1882, decided to respond: To the first part, negatively; to the second part, affirmatively. To the second: As provided in the preceding. FROM WHICH THE FOLLOWING ARE DEDUCED: I. Considering common law, the right to establish statutes, concerning the state of the Church, divine worship, the ordering of the choir, and the service of the Cathedral, belongs to the Bishop and the Chapter; Rota, page 4, volume 1, decision 494, number 6, recent. II. Concerning matters regarding which the Canon, by the statutes of the Cathedral, is obligated to teach Theology in the Seminary, therefore the burden of such teaching, as if it were attached to the prebend, constitutes a part of the duties of that prebend; and to the prebendary, while he teaches Theology, only the daily distributions are due, just as they are due to a Penitentiary and a Theologian, by reason of their respective functions. SIRACUSA, OR CATANIA. MARRIAGE. On July 15, 1882. SUMMARY OF THE CASE. In the year 1867, a marriage took place in Messanae between Joseph Duke and Vincentia, daughter of Baron D., before the Rector, economist D. John Filocamo.

[*Latin ed. p. 215*]

OF MARRIAGES 21S, by special mandate of the Archbishop of Messana, expressly delegated by the Archbishop of Syracusa, and also by the Archbishop of Panormi, with the presence of the parish priest Chirico, John Marcello Pettini, John La Farina, and other witnesses. After the marriage was celebrated, the Duke, without the woman, went to Paris, intending to visit his father, who was awaiting him. Upon his return, it appears that the man engaged in marital relations, if indeed a child was born. However, after a certain time, a sharp discord arose between the spouses, and in the year 1878, the wife sought a personal separation, the administration of the dowry, and the care of the daughters from the civil court, and obtained it. The man, however, on August 8, 1881, approached the ecclesiastical judge of Syracusa, namely the Archbishop, presenting a petition, requesting that the marriage be declared null, alleging a lack of jurisdiction in the priest who officiated at the marriage, reserving for himself another cause for nullity based on a lack of consent. The woman arranged for this matter to be brought before her; and at the request of the woman, the cause was referred by a rescript of the Holy Father to the Sacred Congregation of the Council.

DEFENSE OF THE WOMAN. The Baroness's defender, based on the clause in the citation, argued for the nullity of the marriage; and first, he presented the argument concerning domicile, citing from the Council of

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Trent, Session 24, Chapter 1 on Reform, that there is no marriage which has not been begun before the parish priest of the contracting parties. With this established, he argued that the marriage in question was null, since it was celebrated before the parish priest of Messana, who was neither the Duke's nor the Baroness's proper parish priest, since both, at the time of the marriage, had their *lares* fixed in Catania. Indeed, he asserts that the wife has continuously resided in Catania since childhood, based primarily on the sworn declaration of the woman herself. She herself stated: that she, along with her family, having left Syracusa, established her permanent residence in Catania from the year 1861; and in the year 1867, she went to Messana, where, after "six or seven days" from her arrival, the marriage with the Duke was celebrated. (Art.)

[*Latin ed. p. 216*]

216. OF MARRIAGE. He maintains that this clear and formal declaration ought to have its full force. Because: 1° it was issued by a woman of good reputation and piety; 2° it was strengthened by the oath of the sacrament; 3° because almost countless witnesses confirm this in unison. He then adds that the remarkable agreement reported by the witnesses regarding the Baroness's residence in Catanae eliminates all doubt, and this is further confirmed by the very fact that she herself resided in Catanae, as attested by ecclesiastical authorities in their own declarations, that is, before the marriage. After these points, he concludes that no reasonable person could, at the time of the marriage, doubt that the Baroness resided in Catanae. Furthermore, he argues that the Duke also abandoned his native residence and established himself in Catanae, and that at the time of the marriage he resided there, and that this too is certain, based on the Duke's sworn declaration, and confirmed by the testimony of credible individuals. Moreover, the defender pointed out that the defender of the Syracusan party had endeavored to show that the spouses had acquired a domicile as if it were in Messina, and therefore, if not by delegation, at least by their own right, the parish priest had validly received their consent; for this reason, he presented witnesses to prove that they had a domicile there. But even here, he says, his efforts were in vain, since from this examination of the witnesses, the domicile of the spouses in Catanae was confirmed. Furthermore, he states that a judgment and a supplementary document were presented against the aforementioned defender of the Syracusan party by a notary, with whom the marriage documents were drawn up two days before the marriage. Having reached this point, the Orator observed that the defender of the Syracusan party, having been led to these conclusions, exerted all his efforts to prove that the Duke maintained a domicile in Catanae, and a principal and real residence in Palermo, and to this end, he had collected evidence from the Curia of Palermo. In vain, however, since from the evidence collected by him, it appears that the Duke, in the year

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1867, having left Palermo, resided in Stabi.

[*Latin ed. p. 217*]

MATRIMONII 217. It is stated that he transferred his residence to Catania, with the intention of no longer returning to Palermo. The Duke himself testifies in the marriage records, stipulated two days before the ceremony, that he has his domicile in Catania. Furthermore, the Advocate continues, the administration of the Duke's property in Catania, ordered by his father, the *gesta*, and the donation, made through a deed on July 6, 1876, recorded in the documents of De Marco, which were given to him by his grandmother, clearly demonstrate that the Duke, having established his residence in Catania, intended to remain there. Moreover, further evidence is added by the testimony of the Prefect of the Theatines; who states that the Duke paid sums of 60,000 livres for the restoration of a house in Catania, and 30,000 livres for the renovation of the Prince's Palace, built in Catania. From these considerable expenses, it is evident that he intended to reside permanently, and not temporarily, in these properties, both in the city and in the countryside. What more can be said? All of this shines with such truth that not only civil, but also ecclesiastical officials, public records, and numerous documents presented by the very defender of the Syracusan connection, unanimously confirm the abandonment of the domicile in Palermo and the choice of Catania. This is solemnly testified to by the Syndic of Palermo and Catania, and the Archivist of the Catania court. Therefore, having made all that has been explained so far clear, it becomes evident that Joseph, the Duke, having abandoned his native domicile, established his *lares* in Catania. Consequently, the parish priest of Messina, before whom the marriage was celebrated, was not the parish priest of either of the contracting parties; and therefore, according to the censure of the most holy Council of Trent, Session 24, Chapter 1, concerning the *Forma Matrimonii*, the aforementioned marriage is declared invalid, null, and void. Nor can any delegations from the Archbishops of Syracuse or Palermo provide any support or validity to this nullity of the marriage. For, having proven that the supposed spouses established their domicile in Catania, and that at the time of the marriage they resided there, the entire structure of the marriage collapses, and it falls headlong into the abyss.

[*Latin ed. p. 218*]

218. Marriages can only invalidate a previously declared nullity if they can be shown to be valid. The Ordinary of Catanensis has noted that a delegation from that diocese was necessary to determine the validity of the aforementioned marriage. The defender of the marriage in Syracusanum, however, argued that his efforts had been in vain, and that he had diligently attempted to prove that the Duke had not resided in his original domicile of Panormi. He states that, whether he is speaking of the Duke's original

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domicile, and asserts that, despite the public documents mentioned above, as well as the witnesses he called and examined, and the other witnesses described in summary, all of whom testified to the contrary, as noted above, or whether he is speaking only of the Duke's domicile in originis, it is nonetheless certain that, if the Duke had not resided there, that fact could never be lost, but would remain attached to him, along with his domicile; however, a marriage celebrated before a priest in originis cannot be considered valid, according to established law. Thus, Reiffenstuel, *Jus Canon, univer. lib. IV Decret. Ut. 3 §. 2 de clandestin, despons. n. 58 et 59*. He does not believe that it can be understood to refer only to the domicile of originis, but to the domicile of originis and the residence, because when the Duke requested a delegation from the Archbishop of Panormi, so that he might be able to celebrate the marriage in Messanae, he tacitly declared that he also had a residence in Panormi. Furthermore, it must be strongly emphasized that such a simple and tacit declaration is destroyed by a fact asserted by the other party, and by a solemn declaration issued judicially by the Duke himself. It is also important to note that this confession was made by the Duke in error, who mistakenly believed that the request for the aforementioned delegation was only necessary from the Ordinary of the Duke's domicile of originis. Moreover, how much weight this confession should be given is explained by Angel. de confess. lib. 2 quaest. 14 n. 24, and has been frequently taught by the Rota before Durano, Decision 314 n. 11, before Celso, Decision 273 n. 1, and before Emerix, Decision 1347 n. 10. And it has been held to be even more important in this matter, because...

[*Latin ed. p. 219*]

MATRIMONII 219. The matter does not concern an express and deliberate declaration of retaining domicile in Panormi, but rather a mere presumption, which might be deduced from a request made by the Duke to the Ordinary of Panormi. Nor did he consider that any strength could be added to this by another declaration issued by the Duke himself, when dealing with the civil marriage. For, apart from the fact that this declaration was issued approximately eight months after the marriage was celebrated, the objection to this is obvious. Even if the Duke had, in fact, transferred his domicile to Catania, he had nevertheless not yet fulfilled the requirements of the civil law, namely, that he had not presented the two declarations prescribed by the current Code in articles 16 and 17 to the civil registry. The Duke, in fact and in intention, had abandoned his domicile in Panormi, because there was nothing left there that concerned him. But, since he had not issued the two declarations required by the law, he appeared as a resident of Panormi before the Civil Registry. Therefore, he said, it is not surprising that, when the matter of the civil marriage was being considered, he requested services from the municipality of Panormi; otherwise, the officials of Catania would not have been able to perform the marriage

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ceremony under penalty of nullity. And from this it follows that the Duke, in the records of Catania, necessarily declared that he had his domicile in Panormi, in order that his actions would be consistent with the act of delegation; otherwise, he would have clearly contradicted himself. The testimony of that witness who asserted that the Duke intended to return to Panormi should not be dismissed lightly, as he derived this from the care entrusted to him to maintain the horses and carriages there, and to pay the salaries of the servants, and also from the care of certain houses. For the fact that the Duke abandoned his former domicile, he argues, primarily strengthens the presumption that he, who chooses a new domicile, must first say farewell to the former, especially if he leaves behind no property, no wealth, no business, or anything that concerns him there; even more so if he does not even abandon his house, since the retention of the former domicile is considered the most valid indication, as is widely known and precisely stated in Rotam, 244, 3, decis. ram Buratto, regarding the retention of domicile there. The house, however, is the "principal sign."

[*Latin ed. p. 220*]

220. ON MARRIAGE. On this matter, the Defender of the Bond adds a comment concerning two residences, which must be carefully considered: I, because the duplication of residences is very difficult under the law, as the jurist Ulpian admits in leg. 27 ff. ad Municip. §. Celcius, 2°; II, because in this difficult situation, it would be necessary to prove in which of these two places the couple established their home and family, and resided there equally, as stated by the Canonists, especially Reiffenstuel in *Jus Canon, univers.*, book 2, decree title on customary law, § 3; Van-Bspen, title 2 on Betrothals and Marriages, chapter 5, number 8. However, the Defender argues that, since the Duke and his father left Panormi, the Duke did not establish a separate home for himself, nor did he have any property, wealth, or business interests in Panormi; he left Panormi, went to Catania, and established his residence there from January 1867 until the time of the marriage, and he never returned to Panormi. Therefore, he contends, it should be argued that, in addition to Catania, the Duke did not have another residence in Panormi. However, the Defender attempts to insist on the matter of two residences by referring to a house in the Genardi palace. But, since it has been established that that house, which remained closed and still remains so, belonged to the Duke's father, and the Duke himself has not provided irrefutable proof to the contrary, as evidenced by the subsequent testimony regarding other properties, it must be considered. For, it could not be conceived that someone who has a readily available and open home in a city would want to acquire another home there, in order to go there and reside in it. After addressing these points, the Orator proceeded to refute another objection raised by the Defender, arguing that the Defender had attempted to support the validity of the marriage by

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claiming that the spouses had acquired a domicile in Syracusanum, and that, therefore, the marriage celebrated in Messanae before the parish priest Filocamo would be valid, either by virtue of delegation or by their own right. For, beyond the exception of Panormi, the domicile...

[*Latin ed. p. 221*]

MATRIMONII 221: He argues that, if the parties had their domicile in Panormi, it would be superfluous to invoke the aforementioned exception; he adds that Messina is not to be considered a domicile, since it is proven from the acts that the parties from Messina endured a delay of fifteen days at most. 1° Because the canonists unanimously teach, or at least a space of one month is required, to establish a quasi-domicile through residence in a place for the greater part of the year. 2° Because it has not been proven that the parties intended to reside for a long time in Messina, and such an intention is substantially necessary to establish a quasi-domicile. Furthermore, he states that not only is there no witness to attest to such an intention, but that, on the contrary, the immediate departure of the spouses after the marriage, while a public illness still persisted, clearly reveals the opposite. It is not relevant that the father of the bride rented a house in Messina, because he did so because the Duke, the fiancé of his daughter, had arrived at a public inn where he himself and his family were staying, and he, for reasons of religion, did not want his daughter to live under the same roof as her fiancé. But, even granting, although it is not conceded, that the spouses had acquired this quasi-domicile in Messina, the marriage would nevertheless remain invalid, as the spouses did not reside in the parish to which Father Filocamo was the pastor, but in the territory of another parish, in which the pastor Chirico exercised jurisdiction, at the time of the marriage, as is evident from the acts. It would not help to argue that, although the marriage was celebrated before the pastor Filocamo, another pastor, Chirico, intervened, and therefore the marriage is valid as if it had been celebrated before their own pastor. For, from the acts presented as evidence, it has been established that the pastor Filocamo was used by the parties as their own pastor, and that their consent was formally received by him, while the pastor Chirico merely participated in the wedding as a spectator and witness. Given this, with the presence of their own pastor under him...

[*Latin ed. p. 222*]

222. For a marriage to be valid, it is required that the priest, as such, formally receive the consent of the spouses and bestow a blessing upon them. The presence of another priest, who simply acts as a witness, as a *privata* person, that is, as a mere observer, cannot produce any effect; therefore, a marriage celebrated in this manner is to be declared null and void, even on this very point. Consequently, whenever such a marriage is

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considered, its nullity becomes evident and shines forth before all.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. The Defender divided his argument into two sections: in the first, he sought to demonstrate, not only from the testimony of the witnesses heard in the four Courts, but also from various facts, that the Duke of Palermo had not lost his domicile; in the second, he endeavored to show that he had acquired a domicile in Messanae.

Turning to the first point, he stated that, as is clear from the Sacred Scriptures in the cause at *Romana* or Tudert, on January 28, 1769, it is understood that "anyone" can have two domiciles, not just two, but even more, in different diocess, towns, or cities, and thus enjoy the rights and privileges of each. The *Rota* also states in the case of *Terracina* concerning succession, on January 23, 1725, § 15, before Cilicio; and in another case at *Romana* or Tudert, on March 14, 1772, § that "nothing prevents anyone from acquiring a domicile in different places and cities, and remaining there at the same time." It is also established in law that both domiciles are valid for contracting marriage, so that one can choose one over the other; and a domicile is not lost if, although absent for a long time, one does not intend to abandon it. As stated by the Cleric in *Discourses*, 39, page 5, number 3: "A change of mind or an accidental absence, without the intention of abandoning the paternal home, and without the will to remain permanently in this new place, does not invalidate the jurisdiction of the priest of the former domicile." After these remarks, he proceeded to examine the testimonies of the witnesses.

[*Latin ed. p. 223*]

MATRIMONII 223: "These [cases] are divided into four classes, according to the four courts in which the proceedings were completed; and from all of them, the advocate for the marriage concluded that it was not proven that the Duke of Palermo had abandoned his domicile. Regarding the seven witnesses examined on the part of the man, he noted: five of them are ignorant of the Duke's intentions; one, with some hesitation, asserts that he seemed to have left Palermo with the intention of not returning; the last knows nothing. On the part of the woman, the witnesses presented in the Syracusan court, three know nothing; two rather assert the contrary; the sixth responded less appropriately; the last strongly affirms that he believes the Duke of Catania had resided in Catania even before the time of the marriage; therefore, he proves nothing. The advocate for the marriage asserted that no strength could ever be added to the contrary defense, from the nine other witnesses selected and summoned to court by the advocate for the marriage in Syracuse, since their testimonies are of the same weight as those mentioned above. Nor are the depositions of fifteen witnesses given in the Catania court considered less valuable, especially because they testify not from their own knowledge, but from hearsay. And he said that

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it is laughable, the testimony of the notary, who excludes the Duke of Palermo from having a domicile, because in the marriage records, the Duke of Catania is said to have resided there; and he believes this to be confirmed by the argument drawn from the will of the girl's father, who would never have permitted his daughter to marry the Duke, unless the Duke had established his domicile in Catania. But regarding this will, which was brought into the agreement, neither feather nor trace is found. Afterwards, he proceeds to examine the testimonies of the witnesses in the Panormitan court, seven of whom were summoned by the judge, and three others by the advocate for the Duchess, in order to present what is said to be contrary evidence. He calls these witnesses superior to the others, if not by integrity, at least by knowledge, since they are noble citizens of Palermo, connected to the Duke by friendship and kinship. But as for their testimonies, six of those chosen by the judge explicitly assert that they do not know the Duke's intention to abandon his domicile in Orense; one reports having heard from the girl's father..."

[*Latin ed. p. 224*]

22. Regarding the MARRIAGE, the daughter was not given in marriage to the Duke, except under the condition of residing in Catania. The last witness openly testified that he had heard the Duke declare that he did not wish to leave Palermo. However, two witnesses brought forth by the Duchess asserted that they knew nothing. One openly confessed that he had heard the Duke request to go to Catania. The defender, on the other hand, questioned this witness, attempting to demonstrate that, while the Duke was residing in Paris, he had not expressed any intention of permanently residing with his daughter in Palermo. Concerning the Theatine Prefect, it is said that he freely asserted that the Duke had abandoned his home in Palermo, after having incurred considerable expenses in establishing certain properties elsewhere. Furthermore, the defender spoke at length about the witness, the Priest, whose testimony he considered to be of great importance; for he had been the Duke's teacher, and had assisted him in many affairs; so that he was held in high esteem by both spouses, and that, as a good priest, if he could, he would certainly offer medicine to the ailing Duke, drawing him back from the mire of sin; which, indeed, he could have done, if he had wished, by declaring the marriage null and void due to the lack of a domicile: but, led by love of truth and conscience, he confessed the truth before the judge. The defender rightly drew attention to the importance of this testimony, because the unfortunate woman had moved every stone to prevent the Priest from being brought to judgment, dismissing all the reasons that she had presented before the Vicar General. Having brought this analysis of the witnesses to a conclusion, the defender of the marriage easily demonstrated that, among the numerous witnesses, most asserted nothing against the matter; some could only serve to show

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whether the Duke had a domicile in Catania; while almost all were ignorant as to whether the Duke maintained a domicile in Palermo, and finally, one or the other stood for each opinion; so that, in this state of affairs, the rule given by the Sacred Rota must be kept in mind, as stated in Decree 431, page 18, Recent, number 6 and following, where it is written: "Therefore, when proofs regarding this domicile are presented from here and there, and appear to be contradictory, they must be reconciled with true harmony."

[*Latin ed. p. 225*]

MATRIMONII 22o: Concerning taking up residence, it is not as Labeo did, according to Bartolus, in *Consilium* 234, who in this matter gives more weight to feeling than to reason, as also reported by Mascabrun in *Censura Consilii* 69, n. 62. But it must be understood with reason, and in the sense of the compatibility of multiple domiciles and residences, which one can maintain in different places, as is indicated in the text of Justinian, in *Institutiones*, Book I, title 14, using more frequently one than the other. Having explained these things, I proceed to refute the motives that the Duke may have had for remaining in Catania, abandoning his domicile in Panormi. These motives, however, the defender of the marriage reduced to two: first, that the paternal estate in Catania, of which the Duke had been the administrator, still existed; second, that the bride's father had imposed a condition for the marriage, namely, that the bridegroom reside in Catania. Regarding the first point, it is easily reconciled with having two domiciles, and this, moreover, is demonstrated, beyond theoretical considerations, from the very things that the opponent himself presents. Since, according to three public instruments of lease and purchase made in Catania, it is stated that the Duke, residing in Panormi, was the administrator of the paternal estate in Catania, although these transactions were completed in the years 1862 and 1865; from this, it can be deduced: if the Duke, residing in Panormi at that time, could administer the paternal estate in Catania, then, *a fortiori*, he could do so after the year 1867, residing in Catania, without being forced to abandon Panormi. As for the condition imposed by the bride's father for the marriage, namely, that the bridegroom reside in Catania, it must be noted that this was not a condition *sine qua non*, and yet, there is no mention of it in the marriage records; indeed, after the marriage, the bridegroom resided sometimes in Catania, and sometimes in Panormi. Furthermore, two special testimonies, which, because of their official character, are considered most conclusive, can be presented: first, there is the testimony of the Syndic of Catania, in which it is asserted that the Duke resided there, but this does not exclude the possibility of another domicile in Panormi; second, the testimony of the Syndic of Panormi, which, deservedly, was rejected as invalid, since the document was not

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properly executed, as found in *Acta*, Volume XV, page 573.

[*Latin ed. p. 226*]

226. Marriages resulting from civil records, but also from the assertions of certain witnesses, of which some are dubious, and which may have no validity. Another serious argument in favor of the validity of the marriage is derived from the civil marriage, which was celebrated after his return from Paris in December 1868, before the Magistrate of Otan, by a delegate of the Municipality of Palermo, as can be seen in the report of the Archbishop of Syracuse transmitted to the Sacred Congregation. From all of this, it is concluded that, even in 1868, the Duke of Palermo had not abandoned his residence. This is further evidenced by the fact that Palermo possessed several properties that could have been sold and transferred, according to the assertions of the witnesses: for example, Palermo had servants and horses and carriages in Palermo, which he entrusted to a friend, Father [P.], to pay the salaries of the servants and to ensure that everything was carefully preserved. This cannot be reconciled except with the intention of returning to Palermo. Even if the hypothesis that Palermo did not reside in Palermo were to be considered, the validity of the marriage would always remain, since the marriage was contracted before the Parish Priest, as if in his domicile, which the bridegroom and especially the bride of Messina had. Indeed, we are taught by law that a quasi-domicile can be acquired by residing in a place for a significant portion of the year: for example, the bride's father had rented a house for three months, as evidenced by the testimony of the lessor, although the delay was only one month. The intention of the bride and groom of Messina was to remain until the fear of the plague, which was raging elsewhere, had subsided, which could extend to a year. For this reason, a quasi-domicile is established, as taught by the Doctors of the Church, and especially by Schmalzgrueber, part 2, title 3, § 149 and following, who excludes only those who reside there for the purpose of recreation or for cultivating the land, because such a reason is not for a longer period of time. Furthermore, the teaching of Benedict XIV, who requires a delay of a month to acquire a quasi-domicile, applies to those who do so in order to evade their own Parish Priest; and the month that the Pope requires establishes a presumption regarding those whose intentions are unknown. Therefore, Scavini correctly states in book 3, treatise 12, "the month of residence..."

[*Latin ed. p. 227*]

MATRIMONII 227 » It is cited that presumption does not extend to the limit. Therefore, the cohabitation of one party, considered as a quasi-domicile, is not always necessary, nor is it always sufficient. » And today, after several decisions of the Holy Office, which are reported, in the case of Matrim. 20 Feb. 1723 and the opinion of Cardinal Tarquini,

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the Benedictine Constitution (1) is interpreted as follows: Thus, in Messanae, the bridegroom, fearing the plague, before the parish priest of St. Julian, entered into marriage with the bride, legitimately. Although this parish priest did not bless the marriage, since the parish priest Filocamo was present by delegation of the Archbishop of Panormitania, he also participated in the celebration, and as a witness to the marriage, he attested to its validity. Indeed, no doubt should be raised about the true presence of the parish priest, for the words of Trent are clear: "If anyone enters into marriage otherwise than in the presence of the parish priest, etc.," from which it is deduced that the physical and moral presence of the parish priest is necessary. Regarding the question of whether this presence must be such that, before the parish priest, consent is expressed and that the parties recognize him as such, the defender of the marriage answered, quoting the teaching of Benedict XIV in De Synod. Dioec. lib. 13 Cap. 23 n. 5, drawn from Paul De Matr. lib. V cap. 21 and from Schmalzgrueber De Cland. despons. §. 5 n. 234, which refer to the resolution of the Sacred Congregation as follows: "Can a marriage take upon itself if two parties enter into it by words in the present, in the presence of the proper parish priest, and without omitting the other requirements, to a contract to which the parish priest has not been formally attached, but is present perhaps for the sake of a feast, or conversation, or another matter, and hears this contract being carried out, and afterwards one of the contracting parties wishes to withdraw from this contract because of a defect?" The Sacred Congregation answered: "It is possible, unless other circumstances intervene that prove that the parish priest was intended to be present by the contracting parties." However, the defender of the marriage states, that in the matter at hand, there is no doubt that the parish priest intended to be present at the marriage as such, and that the contracting parties intended him to be present as such. (1) This opinion was reported in Vol. X I, page 567.

[*Latin ed. p. 228*]

228. MARRIAGES not to be rejected: it is permissible if he has fulfilled the role of witness. Whether he is considered as an authorized witness, such as a parish priest, or as a simple witness, this quality always inheres in the parish priest by virtue of his office, as has been affirmed. Therefore, whatever the circumstances, whether the Panormitan domicile is considered, or what occurred in the celebration of the marriage in Messina, the defender always maintained the validity of the marriage. Considering these other points, the following question was to be resolved: Whether it can be established that the marriage is null in this case. RESOLUTION. The Sacred Council, after discussion on July 15, 1882, decided that the answer should be: From what has been presented so far, it does not appear to be established. FROM WHICH IT IS GATHERED: I. That anyone can have, not only

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two, but also more domiciles, and enjoy the rights and privileges of each. II. That, according to the Doctors, it appears from an accidental change, without the intention of abandoning the paternal home, and without the will of permanently remaining elsewhere, that the jurisdiction of the parish priest of the first domicile does not cease. III. From Benedict XIV, *de Synod. Dioec.*, book 13, chapter 23, paragraph 5, it cannot be doubted that the validity of a marriage contracted before a parish priest is maintained, even if he is called by another name, provided that he has been used by the contracting parties as a parish priest. IV. In order that the marriages might be declared invalid, it would have had to be demonstrated by the testimonies of witnesses, and other arguments, that the spouses lacked a domicile and quasi-domicile; in which case, all ordinary or delegated jurisdiction would be lacking. But the Fathers considered that such juridical proof was lacking, based on what had been presented.

[*Latin ed. p. 229*]

220 INSTITUTION (1) On the 17th of June, 1882. Anthony R., born in the year 1712, by his will, established a simple benefice subject to patronage, with the condition that three Masses be celebrated each week at the main altar, or, if that altar were unavailable, at any other altar in the Church of Saint Mary in the parish of Ross. He bequeathed the patronage of this benefice to his daughter, Mary; and he granted her the faculty of presenting her own sons, upon reaching the age of eight years, provided that they desired to enter the sacred military order. And in this case, the testator's daughter should have fulfilled the obligation of the Masses until her sons had adorned themselves with the sacred priesthood. However, should Mary not bear children, or if her children should refuse to enter the sacred military order, the testator designated the sons of his brother, Aliprand, in the male line, as successors to the patronage, perpetually. And in the same manner and with the same conditions, he designated the sons of his brothers, Bartholomew, and Thomas. He desired that the order and the prescribed method be observed with regard to all descendants from the aforementioned lines, who should be found capable of obtaining the benefice. SUMMARY OF THE FACTS. Until the 5th of October, 1878, the proceedings concerning the aforementioned disposition proceeded peacefully. At that time, Peter Rossi, descended from Aliprand and designated in the first line by the testator, nominated his son, Maximus, born on the 16th of June of the year 1871, for the vacant benefice, and he designated another son, Camillus, who was older, as a substitute, in the event that Maximus did not please the Bishop. The episcopal curia gave a response to the petitioner: that the presentation of Maximus could not be accepted due to his lack of age; and that the presentation of Camillus could likewise not be accepted, because

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he had not yet completed his studies.

[*Latin ed. p. 230*]

230 He had begun the institution of a gymnasium, which leads only to an ecclesiastical state. Having excluded both of Peter's sons in this way, the Ordinary granted a period of six weeks to present Bartholomew of Ross, who, being descended in the second line from Bartholomew, was found to be the only one eligible to receive the benefice, and who had already completed the first class of the gymnasium in Lodi. But Peter, believing his son to be worthy of being nominated to the vacant benefice according to the foundation documents, appeared before the Ecclesiastical Court on October 25th, declaring that he did not wish Bartholomew to be nominated, firstly because those called in the first line had priority, and secondly because it was not certain that Bartholomew truly descended from the second line of those called. Not content with this, he concluded: that if any doubt still remained, he would refer the matter to the competent tribunal, suspending the granting of the benefice until the outcome of the judgment. However, the episcopal court considered such protests from Peter to be of no consequence, and, after the deadline for nominating someone had passed on July 6th, granted the benefice to Bartholomew. Feeling aggrieved by the court's action, Peter of Ross immediately appealed to the Sacred Congregation, humbly requesting that the granting of the benefice, which had been carried out in favor of Bartholomew by the court, be declared null and void, and that the benefice be granted to his son, Maximus, who was already ten years old.

> SYNOPTIC ACCEPTANCE OF THE DEFENSE OF THE PATRON. The advocate, in order to prove that Maximus is eligible to receive the benefice, states that it is sufficient to demonstrate two things: 1. "That Peter is truly descended from the line of Aliprandi of Ross in the first place of substitution called by the Testator, and that the one presented truly fulfills the conditions desired by the founder." Regarding the first requirement, he says that it is sufficient to examine the genealogical chart, from which it appears that Thomas descends from Aliprando, the Testator's brother; from Thomas, another Aliprando; from Aliprando, Thomas the younger; from him,

[*Latin ed. p. 231*]

INSTITUTIONIS 231, it is necessary to trace the origin to the late Doctor Aliprandus, who was the father of the living Peter. This genealogical tree must be carefully considered because, as the Parish Priest states, it was taken from the registers of the parish archive and from authentic documents of other parishes. Therefore, not only does it deserve all credibility, according to the teaching of the Canonists and the practice of the Tribunals, but it also provides complete proof, as Mascard states, *de probat*, vol. 2,

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conc. 672. Furthermore, the Orator adds, it is clear that the condition of suitability required from the foundation is met. Indeed, the Testator stipulated that, in the case where Anne had male children, these should be able to obtain the benefice, provided they were eight years old and preferred to embrace the sacred military order. However, anticipating another case, namely that Anne either had no children, or that these refused the clerical tonsure, he commands that the same method and order be observed in the lines of substitution, regarding those called, whether actively or passively. Therefore, he imposed two conditions, so that the presented individuals would be suitable for the benefice, namely that they had reached the age of eight years, and that they wished to follow the clerical military order. He states that this does not contradict the disposition prescribed by Trident, which requires the age of 14 years for the acquisition of the benefice. For it is permitted to the founder to impose any honest conditions in the institution of the benefice, as Reiffenst. states, *lib. 3 Decret*, *lib. V. n. 10o*; and Card. De Luca teaches that the laws established at the time of the foundation must be observed, even if they are contrary to common law, *disc. 26 n. 8 de iurisd.*, provided that these do not affect the essence of the benefice, as the same author states, *Disc. 93 n. 8 de Benef.*. It is readily deduced from the fact that, before Trident, the age of 7 years was sufficient, as the aforementioned De Luca clearly teaches, *disc. 95 n. 6 de Benef.*, and in the notes to Trident, *disc. 14 n. 26.*, that the condition of age does not affect the substance of the benefice. Indeed, the Orator states, the youth Maximo demonstrated the age and vocation for the ecclesiastical state. Certainly, with regard to the required age, the resolution is easy and obvious, since...

[*Latin ed. p. 232*]

232. For indeed, Maximus, after examining the genealogical tree, was born on July 16, 1871, and was presented to the rightful Patron only in October of the year 1878, thus having already reached his eighth year; or, if account is taken of the date of the collation of the benefice, which occurred on July 6, 1881, with the favor of Bartholomew, he had already completed his tenth year. And concerning the fact that Maximus had the will to embrace the clerical state, he himself invokes the Bishop as a witness, to whom he had made repeated requests for tonsure. Furthermore, Maximus had received the sacrament of Confirmation, he read and wrote well, and he was already deemed suitable to undertake the gymnasium course. Therefore, since he fulfilled all the requirements prescribed by the testator, the advocate contended that he could not have harmed the evident right of the Curia to act in any way. Having reached this point, the advocate calls attention to the fact that the benefice had been continuously held within the line of Aliprandi, who had regularly administered the goods of the benefice during the period of vacation. And if the defect of age had been an impediment to Maximus obtaining this benefice, the advocate certainly

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observed that the episcopal Curia could not have failed to recognize that this impediment could have been removed by a dispensation, which the Sacred Congregation of Councils is accustomed to grant even in more difficult cases, as can be seen in the Asculana Cappellaniae of August 25, 1750, in the Neritonen Abbey of November 22, 1760, in the Lucana Beneficii of May 17, 1740, and most recently in the Tridentina Indulti of July 26, 1879, granting a benefice to a curate for seven years, so that the young man, passively called, might reach the required age (1). However, granted, but not conceded, that Maximus was ineligible to obtain the benefice, the advocate argues that the other son of the client, Camillus, who was presented together with him, could not have been rejected, since he was also eligible according to the law of Trent, from which it is manifest that lay Patrons can vary or cumulate in presentations. This is confirmed by the testimony of Cardinal De Luca, in Dis. 59, n. 19, and Dis. 43, n. 7, concerning the *Jurepy* (1). (1) You have this question in Vol. XIII, 201.

[*Latin ed. p. 233*]

INSTITUTIONIS 233: Truly, not only was there no impediment on the part of the one presenting [the candidate], but neither was there any impediment on the part of the one being presented: for Camillus, by virtue of his descent from the line of Aliprandi, had already surpassed the seventh year of age, according to the foundation, and indeed even the fourteenth year of age, according to the decree of Trent; he had received the Sacrament of Confirmation, knew the rudiments of the faith, and already knew how to read and write. Furthermore, the advocate stated that the Bishop's reason for rejecting Camillus' presentation had no value, because the young man had not yet begun his studies at the gymnasium. For the sacred canons nowhere decree that those who are to be presented for a benefice must know the Latin language. And although the Council of Trent, Session 23, chapter 11, concerning Reforms, prescribes some knowledge of the Latin language, it requires this of those who aspire to the lower orders, not of those who desire to receive the first tonsure. Nor does the Curia object that, since Bartholomew, descending from the second line, had been tonsured, he could not confer the tonsure upon Camillus, lest he cause prejudice to Bartholomew. Indeed, when the Bishop confers the first tonsure, he does not directly intend to cause prejudice to another; but primarily and solely, he intends to enable those who are legitimately entitled to be enabled. As De Luca states in Disputation 70, number 18, concerning Jurep. Moreover, De Luca notes in Disputation 88, number 4, that when the one presented is equal in suitability to another, he is not therefore to be considered less suitable simply because he may require a dispensation, when another, not requiring a dispensation, is to be preferred when his right is superior. However, the advocate maintained that the right of Camillus and Maximi, as descendants from the first line of Aliprandi, clearly outweighed the right

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of the adversary, who descended from the second line, without any doubt whatsoever. Finally, the advocate argued that Bartholomew did not belong to the family of the founder of the benefice; and he attempted to prove this with the testimony of three witnesses, who were, in terms of both age and moral character, beyond reproach. Nevertheless, even admitting the absurd hypothesis that Bartholomew belonged to the second line...

[*Latin ed. p. 234*]

"234. It concerned the line of succession, and that the aforementioned line of Peter excluded it; nevertheless, he affirmed that the collation of the benefice made by the Bishop could not, in any way, be upheld, because the useful time had already elapsed, and the collation of the benefice had reverted to the Holy See. Finally, he declared that such a collation should be considered invalid, because the benefice had become the subject of litigation at the very moment when the patron declared before the Court that the cause should be decided by the contentious tribunal, should it happen that the Bishop disregarded the presentation made by the patron himself. Therefore, considering the matter in its entirety, the advocate concludes that the collation of the benefice, carried out by the episcopal court in favor of Bartholomew, cannot be upheld. DEFENSE OF THE BISHOP. On the other hand, the Bishop endeavored to demonstrate that the collation of the benefice must be upheld, since it was carried out according to the procedures of law. To demonstrate this, he alleged a testamentary disposition, from which he affirmed that the founder had intended to establish a true ecclesiastical benefice, and that the founder, not only prescribed the order that must be observed in the act of presentation, but also stipulated that the benefice should be conferred upon him who, at the time of presentation, was found to be worthy to possess it. The testator, he said, ordered that the same method and order should be observed in carrying out the presentation with regard to those who were worthy of the benefice, and who were descended from the aforementioned. From these words, the Bishop said, it is clear that the testator ordered that those who were worthy should be presented; thus, if there were no worthy individuals in the line of Aliprandi, one descended from the line of Bartholomew should be presented. Indeed, the Bishop said, it is clear as the midday sun that the sons of Peter of Ross, although descended from the line of Aliprandi, are not worthy to possess the benefice. Neither of them has received the clerical tonsure, neither speaks the Latin language, neither exhibits a disposition for the clerical state, and neither has reached the age of fourteen years. Furthermore, it is established by law that no one can be the holder of any benefice who is not actually a cleric; for, according to ecclesiastical law, it is provided that..."

[*Latin ed. p. 235*]

INSTITUTIONIS 235: The laity cannot enjoy benefices. Chapter 6 con-

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cerning transitu, and Chapter 2 concerning institution, and Chapter concerning the cause of present possession. Gonzalez, page 1, chapter 2, number 28. Adhering to these principles of law, the Bishop observes that the laity, even those descended from the testator, cannot enjoy this benefice, because nothing in the testament is found which grants this power to his descendants. Furthermore, they cannot possess the benefice, because, as Canon 14 states, "He who has not reached the age of fourteen years cannot receive a benefice," as decreed by the Council of Trent, session 23, chapter VI, concerning Reform, where it is decided: "No one who has received the first tonsure, or even who is in lower orders, can obtain a benefice before the age of fourteen." Garcías de benef., page 7, article 4, number 14; Giraldi Iuris Pontif., page 2, section 92. Concerning the knowledge which one must possess in order to obtain a benefice, Garcías states: "Although for the first tonsure it is only required that one know how to read," page 7, chapter 7, number 4, "and write," as the Council of Trent, session 23, chapter 4, concerning Reform, states, "however, for a benefice, even a simple one, a greater sufficiency is required, namely, that one know how to read, and understand." Gloss, in Clem. 1 de conces. praeb., v. We believe that Imola, Cardinal, and the Abbot, number 1, follow this. Therefore, according to the norms of law, neither Camillus, nor Maximus, both sons of Peter, were fit to obtain this benefice. Not Camillus, because, as the Bishop observes, he was not diligent in his studies; nor Maximus, because, being a young man, he was, by reason of his age, unfit for an ecclesiastical benefice, still devoted to elementary schools, and who showed no inclination towards ecclesiastical service. Since, therefore, the sons of Peter, descended from the line of Aliprandi, are unfit to possess the benefice, because they were not endowed with the requirements prescribed by law, the Bishop urges that the benefice was rightfully conferred upon Bartholomew, since he descends from the second line. Indeed, as the Bishop observes, this young man exhibits all the qualities desired by the testator. He descends from Bartholomew Rossi, a brother of the testator, now found to be twenty years of age, and truly showing himself called to the sacred service, having already been promoted to the "first tonsure."

[*Latin ed. p. 236*]

236 CONCERNING THE FOUNDATION: It should not be objected that the testator stipulated an age of eight years for the benefit conferred by him upon the children of Anne Mary. For the Bishop responded to this objection, stating that the testator had made an exception to the rule of passive patronage in favor of the children of his daughter, Anne Mary; granting them the benefit when they reached the age of eight years; but he desired that those descended from the four brothers should be capable of receiving the benefit. Since this is the case, the privilege which the testator wished to grant to the children of Anne cannot, in any way, be transferred

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to others; for, as the law does not distinguish, neither should we distinguish, according to the canon of law, lest the more common interpretation prevail. And this seems to be even more to be considered in this matter, since it concerns a disposition contrary to common law, which therefore receives a strict interpretation. Therefore, the Episcopal Curia could not, without injustice, suspend the conferral of the benefit until the day when one of the sons of Peter became capable of receiving the benefit, since this benefit could not remain vacant; while the cleric Bartholomew possessed the right to it, and gave hope of becoming a most worthy priest. With these considerations weighed, the matter to be decided was to resolve whether the conferral of the benefit made by the Episcopal Curia on July 6, 1881, in favor of Bartholomew Rossi, should be upheld in this case.

RESOLUTION. After due deliberation, the Sacred Congregation decided on June 17, 1882, to resolve: Negatively, and that the foundation should be granted to Camillus.

FROM WHICH IT IS UNDERSTOOD: I. That both passive and active patronage cannot pass to another person, even if that person is named second, until another person has been designated.

[*Latin ed. p. 237*]

I. Who has been called to the first place, who can, with clear arguments, demonstrate his own succession, and his own vocation.

II. Concerning this matter, those who are named by the founder himself, those who enjoy the right passively, can, and ought to, resist the nomination of any person by their own right.

III. It is permissible for the founder of a benefice, at the very beginning of its foundation, to impose any honorable conditions, even those contrary to common law, provided that they do not injure the essence of the benefices.

IV. It is not surprising that the founder of a benefice was able to impose a condition whereby those passively called could enjoy this benefice at the age of eight years, provided that the condition of age does not affect the substance of the benefice.

FROM THE SACRED CONGREGATION FOR INDULGENCES, MOST BLESSED FATHER, 4 MARCH 1882.

MOST BLESSED FATHER, on the 4th of March, 1882. (Version)

The Archbishop of Modena, with the utmost devotion to Your Holiness, humbly requests that, through Apostolic benevolence, an indulgence be granted (applicable also to the souls in Purgatory) to anyone who recites the following prayer to the Patriarch.

Most Holy Father, Joseph, spouse of Mary, the Most Holy Virgin.

The Archbishop of Mutina, with heartfelt devotion to Your Holiness, humbly implores Apostolic clemency to grant some indulgence (applicable to the souls in Purgatory) to any person who recites the following

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prayer to the Patriarch, Saint Joseph, the spouse of the Most Holy Virgin Mary:

"Most Powerful Patriarch,

"Most Sorrowful Patriarch, Saint Joseph, patron of the Catholic Church, who was incessantly invoked by you in his anxieties and cares, Patron of the universal Church, who has always invoked you in his anxieties and tribulations..."

[*Latin ed. p. 238*]

238 From the exalted seat of your power, may your glory be magnified, and may your loving gaze be turned upon the entire Catholic world. May your paternal heart be moved to behold the mystical Bride and the suffering Body of Christ, afflicted and persecuted by powerful enemies. May you deliver and protect the Vicar of Christ, who has suffered so many grievous sorrows on earth; may you wipe away the venerated tears of the Pontiff; may you defend and preserve him; and may you intercede with the Giver of peace and charity, that the entire Church, freed from all error, may serve God in perfect liberty; that, having destroyed all adversities and errors, the Church of Segura de Lon may serve God in perfect liberty. Amen.

His Most Holy Lord, Pope Leo XIII, in an audience held on March 4, 1882, granted, with paternal benevolence, to all Christian faithful of both sexes, who shall have recited with devotion the aforementioned prayer in honor of Saint Joseph, a hundred days' indulgence, to be gained only once, valid forever, without any set conditions. Notwithstanding any contrary provisions. Given in Rome, from the secretariat of the aforementioned Congregation, on March 4, 1882.

A. L. CARD. OREGLIA.

S. STEPHANO

Pius DELICATI, Prefect.

Antonius Espinosa, Secretary.

Most Blessed Father,

On March 18, 1882, Anthony Espinosa, General Vicar of Buenos Aires, prostrates himself at your feet in spirit, to obtain a special indulgence in favor of the Society of Saint Joseph. The Society of Saint Joseph, canonically established in the city of Buenos Aires, in Southern America, is dedicated to the collection of Peter's Pence, and each month it organizes sermons suitable for declaring and defending Catholic truth in the Metropolitan Cathedral and other churches; it also promotes sacred expeditions among the indigenous people, especially in Patagonia, and increases the number of Catholic schools in Patagonia itself, in the city, and in the surrounding

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areas, through the dissemination of religious books, Christian instruction, and spiritual exercises.

[*Latin ed. p. 239*]

23t) He strives to promote religion, foster piety, and, as far as his abilities allow, work for the salvation of his neighbors, through exercises, public adoration of the Sacrament during the Forty Hours, and also through the restoration and embellishment of sacred buildings. To this pious Society, both as a whole and to its individual members, the Most Holy See has recently bestowed the Apostolic Blessing; and now, the same Society, confidently turning to the Most Holy See, requests an Indulgence for the recitation of the following invocation in honor of St. Joseph. "May we be protected by your safe patronage, O most holy Joseph, may the Lord grant you grace and be with you always, etc." On March 18, 1882, Pope Leo XIII, in an audience with the undersigned Secretary of the Sacred Congregation for the Propagation of the Faith and for Sacred Relics, granted to all Christian faithful, of both sexes, who, at least with a contrite heart, shall devoutly recite this invocation in honor of St. Joseph, a partial Indulgence of three hundred days, to be gained once a day. This present grant is valid forever and without any conditions, notwithstanding any contrary provisions. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on March 18, 1882. By L. CARD. OREGLIA. A. S. P. Delicati. BEATISSIME STEPH. Prefect. Secretary.

FATHER Leo Marin, a priest of the Congregation of St. Sulpitius, General Vicar of the Diocese of Aquila, and Moderator of the great Seminary of the same Diocese, humbly petitions Your Holiness to deign to approve the following prayers, intended for priests to recite before and after their sacramental Confession, and to grant an Indulgence to them.

Prayer before Sacramental Confession.

"Receive my Confession, most merciful and most clement Lord Jesus Christ, my only hope for salvation, and grant me, I beseech You, heartfelt contrition, and tears in my eyes, that I may, with humility and purity of heart, lament all my negligences, day and night. Lord God, my God, receive my prayers. Savior of the world, good Jesus, who offered Yourself to the death of the cross to redeem sinners, look upon this miserable sinner who calls upon You, lest you so regard my wickedness that you forget my goodness; and if I have committed..."

[*Latin ed. p. 240*]

240. Wherefore, you who can condemn me, have not lost the means by which you save. Therefore, have mercy on me, O my Savior, and pity my sinful soul. Loosen her bonds, and heal her wounds. Grant, most merciful Lord, through the merits of your most pure and ever-Virgin Mother, Mary, and of your Saints, your light and your truth to my soul, that it may show

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me all my faults, of which I ought to confess, and that it may help and teach me to explain them fully and with a contrite heart. Who lives and reigns world without end. Amen. *Prayer after Confession.* May this confession be pleasing and acceptable to you, Lord, I beseech you, through the merits of your Blessed ever-Virgin Mother, Mary, and of all the Saints; and whatever may have been lacking in it, may your piety and mercy supply, and may you deign to absolve me completely and perfectly in all things for all eternity in heaven. Who lives and reigns, God, for all ages. Amen. The Most Holy Lord, our Pope Leo XIII, in an audience, granted thus on August 19, 1882, to the following Indulgence to the Sacred Congregation for Indulgences and Sacred Matters, which is granted to all those who, having recited the prayers and confessed their sins before the relics, with at least heartfelt contrition and devotion, both before and after the sacramental confession, shall receive this Indulgence for two hundred days, perpetually. Granted in Rome, from the Secretariat of the aforementioned Sacred Congregation, on August 19, 1882. By A. L. CARD. OREGLIA. STEPHANO Franciscus della Volpe, Secretary Prefect.

[*Latin ed. p. 241*]

To 241. Encyclical Letter from His Holiness Pope Leo XIII to the Venerable Archbishops and Bishops throughout the Spanish region.

LEO XIII, POPE.

TO THE VENERABLE BROTHERS AND BELOVED SONS, GREETINGS AND APOSTOLIC BENEDICTION.

Much does the generous and noble Spanish nation excel in many things, but it is to be especially noted that, after various trials and tribulations, it retains the study of the Catholic faith, which has always been closely linked to the spirit and greatness of Spain.

This devotion is evidenced by many things: especially by the outstanding piety shown by the Spanish people towards the Apostolic See, which, in every way, through letters, generosity, and pilgrimages undertaken for the sake of religion, they have often demonstrated in recent times. It is also not forgotten that, when Europe looked to them, the Apostolic See was afflicted by calamities.

In all these matters, Venerable Brothers and Beloved Sons, we recognize, besides a certain divine favor, the fruit of your vigilance, and also the commendable purpose of the people themselves, who, even in these difficult times for the Catholic name, adhere diligently to their ancestral religion, and who do not hesitate to oppose the magnitude of dangers with a constancy equal to that magnitude. Indeed, it is right to hope for Spain, provided that this affection of souls is fostered by charity, and that a stable concord of wills is strengthened.

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However, when we consider the course of action that some Catholics in Spain deem necessary, a certain sadness arises in our mind, with a certain resemblance to the anxious concern that the Apostle Paul once felt for the Corinthians. Our predecessor, Pius XVI, rightly praised the Spanish people for their perseverance in honoring the Bishops, and for the great concord that existed among them and with their pastors.

(1) Now, after the studies of various factions, traces of dissensions appear, which, like unchanging errors, distract minds and disturb, to no small extent, the societies established for the sake of religion. It often happens that...

[*Latin ed. p. 242*]

242 ENCYCLICAL LETTER: To those who inquire, it is most fitting that the authority of Bishops should be able to defend the Catholic cause; indeed, sometimes, if a Bishop advises something, or even decrees something within his power, there are those who reproach him, who show ingratitude, or who openly accuse him, claiming that he intended to offend some or others. Now, it is clearly understood how important it is to maintain the harmony of souls, and all the more so when, in the midst of such widespread license of opinions, and in such a fierce and insidious attack on the Catholic Church, it is absolutely necessary that all Christians, united in one purpose and with the greatest possible cooperation, resist, lest they be overcome individually by the cunning and the force of their adversaries. Therefore, moved by such concerns, We, through these letters, call upon Our beloved sons and venerable brothers, and We earnestly implore them to use their prudence, authority, and influence to interpret Our salutary warnings and to strengthen concord. It will be fitting, in the first place, to refute the false reasons that undermine mutual respect, because many are deceived by the contrary error. For some do not merely fail to distinguish the political realm from religion, but they even wish to separate and sever them completely, believing that there is nothing in common between the two, and that nothing should be attributed to one by the other. These people are not far removed from those who prefer that the state be constituted and governed without God, the Creator and Lord of all things; and they are all the more mistaken, because they deprive the republic of its richest source of benefit. For when religion is removed, the stability of those principles upon which public safety most relies must necessarily waver; and those things which derive the greatest strength from religion, namely, to rule justly and moderately, to be subject to the authority of duty, to restrain passions, to render to each what is due, and to refrain from touching what belongs to others, will weaken. But just as this most impious error must be rejected, so too must the opinion of those be avoided who mix religion with some part of the civil realm, and who confuse them to such an extent that those who are, in some respect, considered to have departed from the Catholic

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faith are almost declared to be outside the civil community. This is a most unsuitable way to divide factions: it is a source of grievous harm, and it seeks to destroy the fraternal concord of religion by confining it within the narrow confines of politics, and it opens a wide door for the multitude. Therefore, it is necessary to distinguish between the sacred and the civil realms, which are distinct in nature, and to separate them in judgment and opinion as well. For, although civil matters, however honest and important they may be, if...

[*Latin ed. p. 243*]

ENCYCLICAL LETTER 243: Let us consider the nature of this life, its limits, and whether it extends beyond. In contrast, religion, born of God and referring everything to God, elevates itself and touches the heavens. For it seeks to imbue the soul, which is the most excellent part of man, with the knowledge and love of God, and to safely lead the entire human race to the future city which we seek. Therefore, it is right to pursue religion, and whatever is singularly connected with religion, with the highest order. Consequently, as it is the supreme good, it must remain whole and complete amidst the variety of circumstances and the very changes of human affairs and of states, for it encompasses all times and places. And those who hold opposing views, disagreeing on other matters, ought to agree on this point: that the Catholic religion must be preserved in a safe state within the civil order. And for this noble and necessary purpose, all who love the Catholic name ought to diligently strive, setting aside for a time the diverse opinions on political matters, which are rightly and legitimately expressed in their own place. Indeed, the Church does not condemn studies of this kind, provided that they do not contradict religion or justice; but she strives to bring about, for the common good, benefits far removed from all concertation, and she loves all men with maternal charity, especially those whose faith and piety are greater. Concord, as we have said, is the foundation, both in Christian matters and in every well-ordered republic; namely, obedience to legitimate authority, which, by commanding, forbidding, and governing, makes the various human minds harmonious and congruent. We recall this to all, and we explore it, but such things must not only be held in thought, but must also be observed in morals and in daily practice, as a rule of conduct. Indeed, just as the Roman Pontiff is the master and prince of the entire Church, so too are the Bishops the leaders and heads of the Churches which they rightly receive to govern. They have the right in their own jurisdiction to preside, to correct, and generally to decide on matters that appear to pertain to the Christian faith. For they are participants in the sacred power which Christ the Lord received from the Father, and which He left to His Church; and for this reason, Gregory IX, Our Predecessor, says: "It is not fitting for Bishops to be considered as merely acting as representatives of God; for it is fitting that

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those who are called to a share in this solicitude should be considered." (1) And such a great benefit, exercised with such utility for those to whom it is applied, perfects their nature and builds them up, just as each Bishop, like a certain bond, (1) Ibid. 18.

[*Latin ed. p. 244*]

244 The ENCYCLICAL LETTER addresses us, who are associated with each other and with the Supreme Pontiff, as members of a body, united by faith and by a common bond. In this regard, the following statement of Saint Cyprian is weighty: "Those are the Church who remain attached to the people" (1); and even more forcefully: "Know that you are in the Church with the Bishop, and that you are not outside the Church." The shepherd and the flock are bound together; if anyone wishes to be in the Church, he must be with the Bishop, for the unity of the members of the Church grows through obedience (2). Thus is the constitution of the Christian republic, and it is immutable and perpetual; and unless this sacred harmony is maintained, the bonds of unity will be loosened within the body of the Church, and the connections with God will be broken (3). From these things, it is evident that due reverence must be shown to Bishops, in recognition of the dignity of their office, and obedience is due in those matters which pertain to their authority. Having considered these matters, we urge not only all the Spaniards, but we implore them to remember this just office, and to strive to fulfill it diligently. In particular, we encourage those who, following the example of the Clergy, are modest and obedient, and who devote themselves to all matters pertaining to their calling, for their words are most effective and their actions are certainly beneficial. They will know that their efforts will be most fruitful and most salutary for themselves and for their neighbors, if they submit to the guidance and direction of the one who governs the diocese. Indeed, it is not in accordance with their office for priests to devote themselves so completely to worldly matters that they appear to care more for earthly things than for heavenly ones. Therefore, let them be careful not to neglect their duties, lest they be found to be lacking in vigilance, and to exceed the bounds of propriety and moderation. With these considerations in mind, we believe that the Spanish Clergy will, through their virtue, their learning, and their labors, contribute greatly to the salvation of souls and to the growth of the republic. We also consider it very opportune that certain societies exist, which, like auxiliary legions, protect the Catholic name. Therefore, we approve of their endeavors and their industry, and we greatly desire that they increase both in number and in zeal daily. However, the true increase, which benefits both the individuals and the cause of the Catholic faith, is achieved when it is undertaken for the sake of the Catholic cause, and when it is pursued in each diocese under the guidance of the Bishop, to whom obedience and support must be given. It is incumbent upon all to strive for this unity. First

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of all, this is common to all human groups, that all their strength (1) Epist. 69 ad Pupianum. — (2) Ibid. — (3) Colossians 1:19.

[*Latin ed. p. 245*]

ENCYCLICAL LETTER 245 and the efficiency of endeavors arises from conspiracy: therefore, it is fitting that in such associations, whatever is done should be a common effort, mutual charity, and Christian discipline should distinguish the members, as a sign and a mark. Therefore, since the members can easily hold diverse opinions on various matters, it is necessary to remember, lest the harmony of minds be torn apart by the opposing pursuits of factions, to what end the societies are named "Catholic," and to have their minds so fixed on that one purpose in making decisions, that they should appear to be of no particular party, mindful of the divine Apostle Paul's saying: "For as many of you as have been baptized in Christ, have put on Christ. There is neither Jew nor Greek, there is neither slave nor free, but Christ is all, and in all" (1). It is desirable that this be achieved so that not only individual members, but also various societies of the same kind, which must be carefully provided for, agree amicably and willingly. For, as we have said, if the pursuits of factions are set aside, the principal occasions for offensive rivalries will be removed; and it will follow that no one can be worthy of this name who is not converted to the same purpose, and that there will be no disagreement. Finally, it is important that they dedicate themselves to that very cause for which Catholics, especially in their writings, contend for the safety of the religion. We know what they strive for, with what determination they contend; and we cannot help but praise those who are worthy of the Catholic name. But the cause they have undertaken is so excellent and so outstanding that it requires much, and it is not fitting for the patrons of justice and truth to fail in many things; for they should not, while attending to one part of their duty, abandon the other societies, as we have warned. Therefore, we urge them, that by removing discord with gentleness and meekness, they may unite their minds with each other, and with the multitude, both in their own writings and in the works of others, because concord greatly benefits the truth, and nothing is so contrary to it as the acrimony of words, the rashness of suspicions, the injustice of accusations, and whatever else is of this kind; all such things must be avoided and hated. For the sacred rights of the Church, for Catholic doctrines, there should be no contentious dispute, but a moderate and temperate one, which, rather than by the excessive vehemence of style, should be victorious by the weight of reasons. Therefore, let these be the causes for action, which, if followed, will be the perfect standard of your endeavors. We believe that these things, Venerable Brothers, will greatly contribute to

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the concord of Our sons, and will prevent the obstacles that hinder it.

[*Latin ed. p. 246*]

246 ENCYCLICAL LETTER: We seek to interpret Our sentiments to the people, and to strive, as much as possible, that all may apply themselves to those things which We have said. — We are confident that the people of Hispania will readily do this, both because of the devotion shown towards this Apostolic See, and because of the hoped-for benefits of concord. Let them recall the examples of their ancestors: let them consider how their forefathers, with steadfast fortitude, have preserved the domestic laws of their land, not by dissipating their energies in discord, but rather, with one mind and one spirit. Animated by fraternal charity, feeling kinship, and free from heresy, schism, and the powerful influence of evil, they triumphed. Let them follow in the footsteps of those who have received faith and glory, so that they may seem not only to survive in name, but also in their virtues. Furthermore, We deem it fitting to exhort you, Beloved Sons, Venerable Brothers, who are in the same province, to hold frequent consultations with each other, and with the Archbishop, concerning common matters: and whenever greater assistance is required, to turn to this Apostolic See, from which the integrity of the faith and the virtue of discipline flow, together with the light of truth. — Opportunities for this purpose are provided by the pilgrimages which are frequently undertaken from Hispania. For nothing is more suitable for resolving disputes and settling controversies than the voice of Him, whom the Lord Christ, the Prince of Peace, has appointed as His most excellent Vicar here: and also, the abundance of heavenly gifts which flow abundantly from the tombs of the Apostles. But since all our sufficiency is from God, let us earnestly pray with you that God may grant power to Our exhortations, and may make the hearts of the people eager to obey. — May the Immaculate Virgin, august Mother of God, Mary, Patroness of Hispania, be with you; may James the Apostle be with you; may Saint Teresa of Jesus, the learned virgin, the great light of Hispania, be with you, in whom the love of concord, piety, and Christian obedience have shone forth as an example and a light. Meanwhile, as a pledge of heavenly blessings and a witness of Our paternal benevolence, We impart to you all, Beloved Sons, Venerable Brothers, and to the entire people of Hispania, Our Apostolic blessing, with all Our heart, in the Lord. Given at Rome, on the eighth day of December, in the year 1882, in the fifth year of Our Pontificate. LEO XIII, POPE.

[*Latin ed. p. 247*]

At that session of the COUNCIL OF ORDINATION, or COLLATION, on the 20th of May, 1882. A SUMMARY OF THE CASE. Vincent, from the Diocese of T., who had been a student at the Seminary of B. for barely three years, on the 17th of the following November, having presented a petition

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to the Most Holy Prince, stated: that he desired to follow the ecclesiastical militia in the Diocese of R., and therefore requested a dispensation from the ten-year domicile; and that he was about to complete three years from the time when the petitioner had begun to be familiar with that Bishop. (1) The Bishop of B. recommended the petitioner, stating that he was endowed with good character and good morals. The Bishop of T., contrary to the prayers of Vincent, declared: that from his earliest years he had been difficult, capricious, and not obedient to instruction, so that it seemed he was not called to the Lord's service. For even as a young man, urged by his parents, he persistently demanded that I allow him to wear the clerical garb; and because I hesitated to consent, he entered the seminary, with morals and political principles that were not very commendable. A SYNOPTIC DISCUSSION: THE PRAYERS SEEM TO BE REJECTED. The principles of law seem to suggest that no assent should be given to the prayers offered by the petitioner. Indeed, the Council of Trent, Session 14, Chapter 2, on Reform, clearly prohibits a Bishop from conferring orders on those who are not subject to him, without the express consent of his own superior. (1) Familiarity is one of the four causes from which arises subjection to Bishops with regard to the reception of orders; however, a period of three years is required, according to the Constitutions.

[*Latin ed. p. 248*]

248 CONCERNING ORDINATION, BUT ALSO EXCARDINATION, this is decreed: "No Bishop, who are called 'titular' Bishops, even if they reside in no diocese, or have withdrawn from, or are delayed at, any monastery of any order, by virtue of any privilege granted to them for temporarily receiving those who come to them, shall be able, without the express consent of his own superior, or other dispensations, to promote or ordain to any of the sacred orders, or to the minor orders, or to the first tonsure, anyone whatsoever. " Therefore, since the consent of the proper superior is completely lacking in this case, and indeed, the fact itself demonstrates the absence of such consent, it necessarily follows that the requests presented by Vincent must be rejected from the very threshold of judgment. Moreover, it is not fitting to consider the best testimony of the advocate in favor, which was issued by the Holy See: Bishop T. insists that such testimony must be considered worthless, because both the rectors of the seminary, in which the advocate resided for more than two years, and the masters teaching there, are not of good repute. Information should be sought from Archbishop B. so that the character of these officials may be ascertained, and the judgment may be completed. Likewise, another reason presented to obtain favor does not seem worthy of consideration, namely, that the advocate should be considered a member of the household of the Bishop. Indeed, those who are considered members of the household of a Bishop are those who reside within his own home for three years and

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are supported by his expenses. However, in this case, this does not appear to be the situation, since it has been determined that the advocate lives not in the Bishop's house, but in the seminary. Even if, however, he were to be considered a member of the Bishop's household, he still could not be promoted to the orders, nor to the first tonsure, by Bishop B., because, as well as the Council of Trent in the passage cited, even Innocent XII in the Constitution *Speculatores domus Israel* on November 4, 1694, requires the express consent of the Bishop, or testimonial letters, even for the ordination of members of the Bishop's household.

[*Latin ed. p. 249*]

The prayers concerning ordination or excommunication are to be received. However, although it is established by law that no one can be ordained by another Bishop without the express consent, or the testimonial letters, of his own Bishop; nevertheless, it is certain and beyond doubt that, given legitimate reasons, the Supreme Pontiff is accustomed to grant, by the fullness of his power, that someone, even if his own Bishop is opposed, may transfer from one diocese to another in order to receive either the first tonsure or the sacred orders. This is evident from numerous decrees issued by the Sacred Congregation of Bishops, especially from the decree concerning excommunication from Naples, July 15, 1848; from the decree concerning irregularities from Burgos, near the Sepulchre, due to lack of knowledge, February 23, 1875; from the decree concerning ordination, March 23, 1878; and from the decree concerning ordination or excommunication from Vercelli, July 9, 1881. Indeed, legitimate reasons that make the petitioner worthy, so that he may be dispensed from a ten-year residence in a case that does not involve exile, are readily apparent. Foremost among these are the good and excellent morals of the petitioner, which the Sacred Congregation of Bishops usually holds in high regard when granting such favors. Certainly, Bishop B. testifies that he is a young man of good character and endowed with good morals, and that he serves in the Episcopal house as a cleric in the chancery. Furthermore, the fact is present that the aforementioned petitioner has legally established his residence in the city of B. There is also the lack of priests, by which that diocese is afflicted. He has also expressed his desire to be incardinated in this diocese, which is in need of priests. There is also a particular circumstance that for three years he has been numbered among the Bishop's household. Finally, there is the favorable opinion of Bishop B., who requests that the requested grace be granted by the Sacred Congregation of Bishops. Moreover, the testimony of the eminent Bishop and his favorable opinion are usually held in high regard by the Sacred Congregation of Bishops in such and similar cases, and there is no one who can doubt this. Under these circumstances, the Most Eminent and Reverend Fathers were not remiss in deciding how the petitioner's prayers

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should be addressed.

RESOLUTION. After due consideration, the Sacred Congregation of Bishops decided on May 20, 1882, to respond:

[*Latin ed. p. 250*]

250 OF ORDINATION OR ECCLESIASTICAL APPOINTMENT. For this purpose, an oath of perpetual commitment is taken by the candidate; then the words are spoken with the Most Holy [Person]. (1) See *Acta Apostolicae Sedis*, Volume XIV, page 398, where much is recorded concerning testimonial and dismissal letters, and concerning the reasons for which a Bishop is properly appointed to confer holy orders. — FROM THE CONGREGATION OF CLERICS REGULAR AND SECULAR OF ROMA OR VENETIA, OF THE MINOR CAPUCHIN FATHERS, OBLIGED BY SAINT FRANCIS CONCERNING THE RECITATION OF DIVINE OFFICE. On March 24, 1882, Father Pacificus of Conegliano, Provincial of the Capuchin Province of Venetia, humbly presented the following to the Most Blessed Father. The Supreme Pontiff Pius IX, in an audience held with the Secretary of the Holy Congregation concerning the state of the Regular Canons, on August 6, 1858, considered two doubts proposed by the Master General of the Order of Preachers (1), namely: I "Whether those who have made simple vows, which are for the sake of..."

COMPENDIUM OF THE MATTER. (1) We believe it is appropriate to preface this with something for the sake of greater clarity. By the Encyclical Letters of the Holy Congregation concerning the state of the Regular Canons, dated March 19, 1857, concerning simple vows, it was decreed: "After the probation and novitiate, according to the prescriptions of the Holy Council of Trent, the Apostolic Constitutions, and the statutes of the Order approved by the Holy See, the novices shall make their simple vows, after they have completed the age of sixteen years, as established by the same Council of Trent, or a greater age, which perhaps is required by the statutes of their own Order, approved by the Holy See; and concerning laymen and converts, after they have reached that age, which is specified in the Constitution of Clement VIII, as stated above. Those who have made their profession after three years from the day on which they made their simple vows, if they are found worthy, shall be admitted to the profession of solemn vows, unless perhaps for some, as has been granted to certain institutions."

[*Latin ed. p. 251*]

ROMAN or VENICE, 251. Regarding the solemn professions, according to the Encyclical Letters of March 19, 1857, are they bound to the divine office? 2°. Are they bound to observe the Rule of the Order, as solemnly professed? It was ordered to respond: Regarding the first, they are not bound to the private recitation of the divine office, but they must participate in the

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choir, as solemnly professed. Regarding the second, affirmatively, with a firm declaration, already given with regard to the vow of poverty. "Hence, a considerable disagreement arose among the theologians of the aforementioned Capuchin province concerning the obligation of reciting the divine office for clerics who have made solemn vows of simplicity in the Order of the Friars Minor. For some, adhering absolutely to the declaration of Pope Pius IX in the response to the first, state that these clerics are not bound to the private recitation of the office, because the aforementioned declaration, being general, applies to all those who have made solemn vows of simplicity, of whatever order. But many hold the opposite opinion. These, distinguishing between the various rules of the religious orders, and not speaking of institutes which do not have solemn vows, observe that in almost all orders there is no special precept for reciting the divine office, as is found in the Rule of the Friars Minor of St. Francis. For all religious orders who have made solemn vows, the obligation of reciting the divine office, both in choir and privately, arises from the most ancient custom, which, as theologians say, has the force of a law that binds very strongly. And this obligation, for those who have made solemn vows of simplicity, has already been removed for a long time, by a papal decree and with certain knowledge." The decrees issued by the Supreme Pontiff in these letters, regarding the religious vows of simplicity, which must be presented to men of all families of any order who have made solemn vows for three years, are sent to the Congregation and Institute, in which the vows are made, so that Our Holy Father may, in a fitting manner, grant them an opportunity to emit their vows. The necessity of presenting these vows of simplicity is such that it renders the solemn profession invalid, according to the Constitutions. To those who desire to be admitted, we declare and decree that no profession of solemn vows shall be considered invalid or of no force, made by novices, and that in it, for the entire period of three years, the Church of Pius IX will be observed. "We wish to prevent any cause for ambiguity in this matter of such importance from arising in the future, so that those who do not persevere in it..."

[*Latin ed. p. 252*]

252 In the case of the Regular Canons in ROMANA or VENETIARUM, the obligation begins on the day that one solemnly and permanently dedicates oneself to the regular life, that is, from the day of their solemn profession. However, this is not the case for the Friars Minor. For these, the obligation of reciting the Divine Office does not arise solely from ancient custom, but also from a serious precept of the rule; a precept which was explicitly declared by Clement V in chapter "Exivi": "We declare that the clerics shall perform the Divine Office according to the rite of the Holy Roman Church, and this shall be obligatory." Therefore, it must be concluded that, by the force of the rule, all those who have made profession

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in the Order of the Friars Minor of St. Francis are bound to the Divine Office. And this obligation of reciting the Divine Office, whether in choir or privately, for the Friars Minor, begins when the obligation of observing the rule begins; but this obligation also begins and arises from the simple vows of profession, as declared by Pius IX in his response to the second question. Therefore, all those who have made simple vows in the Order of the Friars Minor are also bound to the recitation of the Divine Office, whether privately or publicly in choir, just as those who have made solemn profession. The General Minister holds this opinion certain, stating concerning the response of Pope Pius IX to the first question: "This general resolution cannot be applied to those Orders in which, perhaps, the recitation of the Divine Office is prescribed by the rule, as, for example, in the Order of the Friars Minor. For if those who have made simple vows are bound to observe the rule of the Order, as those who have made solemn profession, and the rule prescribes the recitation of the Divine Office, it clearly follows that those who have made simple vows are also bound to it." Despite this, since those who hold the contrary opinion persist in their views, the speaker implores the Holy See to deign to declare the doubt presented at the end, so as to provide a correct and certain standard for action. The General Minister, having been asked to express his opinion, after consulting with his Definitorium, stated that he and his Definitorium, those of whom he had heard, would be satisfied with the responses of the Holy See, and that they would grant those who have made simple vows dispensation from the private recitation of the Divine Office.

[*Latin ed. p. 253*]

ROME OR VENICE, AUGUST 253. A SYOPTIC DISCUSSION. OBSERVATIONS BY THE PROVINCIAL. He stated that this matter arose when the General Chapter of his Order was considering a dispute, but that certain prudent considerations, E.E. and P.P., had been brought to his attention, in order to safeguard the integrity and vitality of the Rule of St. Francis. Therefore, he said: the response given by the Most Holy Father Pius IX on August 6, 1858, to the first question, namely: "Whether those who have professed the simple vows are generally bound to the private recitation of the Divine Office, and whether this has been considered an authentic declaration regarding the obligation, in general, to recite the Divine Office, both privately and publicly, which is incumbent upon religious orders, by force of ancient custom, which has acquired the force of law," was not intended as a declaration regarding the obligation to recite the Divine Office, which, for example, arises from the reception of the holy orders, or from a special law of a particular Rule or Institute. But if this response were not limited to the obligation to recite the Divine Office for Regular Canons in general, which arises from custom, but were to be understood as absolute, it would lead to an absurdity; because it would destroy all law

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regarding the obligation of the Divine Office for a cleric who has professed the simple vows, and even a subdeacon would not be bound to recite the Divine Office. From various responses given by the Apostolic See, prior to the response of Pius IX, regarding the obligation to recite the Divine Office for religious orders in France, it has always been maintained that the obligations arising from the constitutions of each religious society have been preserved. How, therefore, can it be said that the Apostolic See intended, through this response, to render null and void the obligations arising from the particular rules of religious orders, and especially of the Order of St. Francis? The question proposed is a general one, for all Regular Orders, relating to the obligation of the Divine Office. But the obligation of the Divine Office is incumbent upon all religious orders, because it descends from ancient custom, which has the force of law.

[*Latin ed. p. 254*]

254 ROME, or VENICE, held sway. Therefore, the response of August 6, 1858, concerned only the obligation of reciting the Divine Office, as a general rule for all Religious Orders, by force of custom; it did not concern obligations regarding the Office that might be found in one Order or another. Nor can it be said that that response takes on the character of a dispensation, as some have thought: for there is a lack of the form of concession, which no one requested, through a formal petition. In the Franciscan Order, it is universally held that those who have made simple vows are bound to recite the Divine Office solely by the force of a particular law, or the rule of St. Francis, chapter 3: "The clergy shall perform the Divine Office according to the order of the Holy Roman Church." And therefore, the Minister of the Observants, in circular letters to his religious, speaking of the response of Pius IX, says: "This general resolution cannot be applied to those Orders in which, perhaps, the recitation of the Divine Office is commanded by the rule, as, for example, in the Order of the Minor Franciscans." For if those who have made simple vows are bound to observe the rule of the Order, as they solemnly professed, and the rule commands the recitation of the Divine Office, it clearly follows that those who have made simple vows are bound to it. In the Order of the Conventuals, it is the common and general opinion that the response of August 6 did not abolish, nor weaken, the grave precept that binds all professors to recite the Divine Office, both publicly and in private. The same sentiment prevails among the Capuchins in all provinces, with one or two exceptions. Based on these considerations, the Procurator judged that it had already been demonstrated that those who have made simple vows in the Order of the Minor Franciscans are bound, by the rule, to recite the Divine Office in private, notwithstanding the response of August 6, 1858. With regard to these, the precept of the rule remains in full force: "The clergy shall perform the Divine Office, according to the order of the Holy Roman Church," chapter 3.

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OPINION OF THE CONSULTOR.

(1) I do not understand, he says (1), that when a matter of the greatest importance was to be resolved, this resolution was entrusted to the plenary assembly of the Most Holy Congregation of Bishops and Regular Canons, with the opinion of the Consultor.

[*Latin ed. p. 255*]

ROME, VENICE, 255. How could the Provincial of the Venetian Province raise this doubt, after the resolution of the Holy Congregation of August 6, 1858, in which it was decided that "professed religious, bound by simple vows, belong to any order, are not bound to private recitation of the Divine Office; they must, however, attend the choir in order to solemnly fulfill their vows." The strongest and only argument presented in favor of the affirmative is derived from the obligation imposed by the Rule of St. Francis, which obliges every religious under a grave penalty to recite the Divine Office, whereas, according to the response of the Holy Congregation, even those religious bound by simple vows are also subject to the observance of the Rule. However, after this response, it seems that such an argument has no force. For not only are the Minor Religious obligated by their Rule to recite the Divine Office, but all religious orders, whether monastic or mendicant, are subject to this obligation. This obligation, according to theologians and canonists, derives from the most ancient and universal custom, possessing the force of a universal and general "binding law," a force with which the holy founders imposed, or recalled to memory, this very obligation, which already existed. And indeed, not only the Rule of St. Francis, but also the Rules of St. Augustine and St. Dominic impose this obligation. And therefore, all religious are subject to this obligation, by virtue of their solemn profession, excluding no one, as was declared in a decree of the Cenomanian Congregation of April 19, 1844, concerning the doubt: "Whether, in general, nuns are strictly bound by the force of their profession to recite the Divine Office." The Fathers, after deliberation by the Reverend Father Polidori, responded: "Affirmatively, concerning nuns who have made solemn vows, according to the Rule approved by the Apostolic See, in which this obligation is imposed." With these considerations, the Consultor said: "I do not see how the Capuchin Fathers, who adhere to the affirmative opinion, can maintain that the same cannot be said of the Minor Friars; as if they alone had a Rule, or as if the obligation that is incumbent upon all professed members of other orders is of lesser weight and importance than that which the Minor Friars have under a grave penalty by virtue of their religious profession."

[*Latin ed. p. 256*]

256 ROME OR THE VENETIANS. Therefore, I say, the Consultor stated, that the Holy Congregation, having resolved, with the approval of the

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Supreme Pontiff, that those who have made simple vows are not bound to the private recitation of the Divine Office, had thoroughly examined the rules of various Institutes concerning what is prescribed in this matter; and consequently, when it issued this general and precise resolution regarding not being bound, it implicitly dispensed, to the extent that it was necessary, from the Rule; just as Pope Pius IX dispensed from other parts of the Rule when he issued the noted reforms concerning the admission and profession of religious. Furthermore, it seems to me opportune to note that if the Rule of St. Francis imposes an obligation to recite the Divine Office under pain of a serious penalty, there is no difference in this precept from that imposed on other religious, since all religious, without distinction, are bound by the solemnity of their profession, and many also by the force of their own Rule, to recite the Divine Office under pain of a serious penalty. Therefore, since it has been declared for all and in general that such an obligation does not apply to those who have made simple vows, it must also be said that the same obligation does not apply to the Franciscan brothers; and if this obligation were to be waived for these, it should also be extended to all others. It is also worth noting that if the obligation imposed by the Rule were to be completely distinct from the universally binding law, a grave absurdity would arise: namely, that a religious, promoted to the *sacred orders*, would be burdened with two penalties for omitting the recitation of the Divine Office. For he would violate a precept, if not materially, then formally distinct; as the moralists maintain regarding the violation of the fast by Franciscans on a day of fasting, as established by ecclesiastical law. Furthermore, none of the monastic or mendicant orders, as far as I know, have had any doubt concerning the most clear decision of the Holy Congregation, and all have considered it to be a real exception, benefiting only those who have made simple vows. The same applies to the Father General of the Capuchins and his definitorium.

[*Latin ed. p. 257*]

HUMANAE SIVE VENETIARUM 257: It appears that, in its decree, the Congregation intends to dispense professed members of the simple vows of its Order from the private recitation of the Divine Office. However, as has been stated, when the Most Holy Father dispenses professed members of the simple vows from the private recitation of the Divine Office, He implicitly dispenses them from various regulations that pertain to this obligation. Therefore, the Consultor concluded that nothing else needs to be requested, and that adherence to the general resolution is sufficient. Consequently, it was deemed that the proposed question should be answered with the following response: "Even professed members of the simple vows in the Order of the Friars Minor, notwithstanding their own rule, are bound by the resolution of this Holy Congregation of August 6, 1858, namely, that they are not obliged to privately recite the Divine Office." With the forego-

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ing points noted, the following question was to be resolved: WHETHER professed members of the simple vows in the Order of the Friars Minor are, by virtue of their rule, obliged to privately recite the Divine Office, as solemnly professed. RESOLUTION. After deliberation, the Sacred Congregation of Bishops and Regular Canons decided on March 24, 1882, to respond as follows: They are not obliged, according to the rescript of August 6, 1858. FROM WHICH IT IS UNDERSTOOD: I. Professed members of the simple vows of any order, the Friars Minor not excepted, are not obliged to privately recite the Divine Office. II. For the Friars Minor, they are obliged to recite the Divine Office, just as the Dominicans, Benedictines, and Augustinians are; therefore, if others are freed from the obligation of the Divine Office, the Capuchins have also been dispensed from it by the Supreme Pontiff through the resolution of 1858.

[*Latin ed. p. 258*]

258 MELITEN. CONCERNING FUNERALS AND THE INTERPRETATION OF RESOLUTIONS. September 22, 1882. SUMMARY OF THE MATTER. In the diocese of Chur and Sarnen, on September 17, 1880, four questions were proposed to this Holy Congregation by the Reverend Provincial of the Observant Minor Friars (1). For the benefit of those reading, we here record these questions and the resolutions then issued: I. Does the right belong to whom, to accompany the bodies from the churches of the Regular clergy, which have been brought to perform funeral services, to the common cemetery, where they must be buried? II. Do the parish priests have the right to receive the fees which are given by the heirs to the priest who accompanies the bodies to the cemetery? III. Must the Religious, in the association of the bodies in question, request the parish priest to accompany the deceased to the cemetery? IV. May the Regular clergy proceed with the stole and the conventual cross as far as the tomb, or must both symbols be laid down when passing through the parishes, to be taken up again later in the cemetery? The Holy Congregation of Bishops and Regulars, on September 17, 1880, decided to respond as follows: To I: Affirmative, in favor of the Regular clergy. To II: Negative. To III: Negative. To IV: Affirmative regarding the first part, negative regarding the second part, without pomp and by the direct route. Since these questions and resolutions became known to some parish priests in Meliten, they appealed to the same Congregation. (I) This question, which I beg to recall, is found in Volume XIII, page 416.

[*Latin ed. p. 259*]

MELITEN. 259 s. Ad Congregationem E p. et Reg., ut melius scirent si resolutiones praedictae etiam ad eos applicari deberent, exhibuerunt quaestiones, ut demonstrarent easdem resolutiones eos non attingere. Primum, attulerunt dispositionem Gubernii civilis, diei 10 Maii 1869, quae ita se

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habet: "Quolibet personae, aut Congregationi Romanae Ecclesiae, una vel plures sepulturas possidentibus, gratis concedetur locus, si petatur, in coemeterio extra civitatem." Hinc, asseruerunt parochi ipsi, cadaverum elevationem, consensu auctoritatis ecclesiasticae, a loco mortis ad ecclesiam pro funeribus designatam, et ab hac ecclesia ad coemeterium, vel ad alium sepulturae locum, fieri solitum fuisse a proprio Parocho vel ab alio sacerdote delegato usque ad ultimum tempus. Commune enim dictum coemeterium semper habitum est ceu iurisdictioni parochorum obnoxium; a Episcopo, parochos posse ibi exercere actus iurisdictionis veluti in paroecia. Ius hoc praeterea ipsum recognovit gubernium civile, a quo aliquid rependitur Parochis, pro qualibet associatione ad coemeterium, absque exceptione quoad laicos aut saeculares. Et quamvis P.P. Capuccinis sit data custodia coemeterii, tamen Ordinarii iussu, emolumenta a funeribus provenientia parocho cedere debent; ex quo inferunt quod parochus ipse cadavera resumens ab Ecclesia Funerum, ut ad coemeterium comitetur, resumit ut eadem ducat ad locum, qui fictione iuris habetur veluti pars districtus paroecialis, et in quo absurdum iuridice foret, alios exercere iurisdictionem. Animadvertunt insuper parochi ipsi, huiusmodi iure fuisse perfruiti, etiam ante novum coemeterium erectum. Cum quaestio haec pertractari deberet plenis comitiis, iter ad iuridicam disceptationem paratum fuit per duos consultores, ad id deputatos.

[*Latin ed. p. 260*]

200 MELITEN. Synopsis of the opinion of the first consultant. He presented certain notions of canonical jurisprudence, in order to apply them to the case at hand. Firstly, he stated: it is certain by law that each person must be buried where they ought to receive the sacraments; for both are the right of the parish, namely, to administer the sacraments and to bury the dead; see part I, chapter on burials. Boniface VIII, in chapter 1 on burials, in paragraph 6, states: "If religious or clerics have buried those belonging to other parishes, they are obligated, if requested, to restore both the burial places and all that has come to them by reason of those burials, in whatever way, and we believe that they are completely obligated to do so." And the Holy Congregation of Councils, in Derthonen, concerning Spolii, manutentionis ac reintegrationis, on March 24, 1821, and in Camerinen, concerning Funerum, on June 23, 1821, decreed: "In accordance with the constant doctrine of the Holy Council, the right of the pastors, concerning the perception of emoluments, the maintenance, and the upkeep, must be preserved after the construction of cemeteries." However, the fact that the Regular clergy have the right to conduct a funeral does not imply that they must also enjoy the right to bury; the Holy Council, in Ariminen, concerning Funerum, on June 16, 1827, admitted that a distinction exists between the right to conduct a funeral and the right to bury; and that one is not an accessory to the other. It should not be forgotten, the Consultant

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added, that in matters concerning funerals, custom holds great weight, and is to be observed with the utmost care: and the Sacred Congregations frequently indicate that much deference must be given to custom in matters concerning funerals. It should also be noted that religious families sometimes enjoy privileges from the pontiffs, by virtue of which they are exempted from the jurisdiction of the parish, both with regard to the funerals of their brethren, and with regard to burials in the churches of their orders. From these premises, the Consultant concluded, that an absolute right...

[*Latin ed. p. 261*]

MELITEN. 2. Concerning parishes, the following remains in force regarding association, funerals, and the burial of the deceased, whenever the privilege, custom, or particular petition cannot be invoked. However, in this case, besides the right pertaining to parishes, there exists a custom, a well-established practice, and therefore, I conclude, favoring the parishes, that they should retain their right, until specific privileges or a contrary custom are introduced; nothing preventing the resolution of the Sacred Congregation of September 17, 1880, which pertains only to the particular case under examination (1).

VOTE OF THE SECOND CONSULTOR. Here, he objects, noting that although the resolutions of the Sacred Congregation of September 17, 1880, of which we are speaking, were issued in a particular case, they nevertheless have force even in other similar cases; thus, they constitute a general rule. For they are declarations of common rules, or of the provisions of canon law, concerning the right inherent in Regular Canons to bury the bodies of the faithful; to the extent that those faithful have chosen burial within their own religious houses. This right of burial in the cemetery is exercised, if the church has a public cemetery attached to it; as this Holy Congregation has declared on several occasions: "The Church which had the right to bury in its own grounds now exercises that right in the public cemetery; the erection of cemeteries has only materially changed the place of burial, but the right of burial itself remains intact." All of these things, and others which we omit, indicate that the resolutions issued by this Holy Congregation on September 17, 1880, constitute a general rule, applicable even to Melita.

Two points, says the Consultor, are the reasons on which the pastors rely, arguing that the aforementioned resolutions cannot be applied to Melita: (1) Compare, please, Appendix III relating to all Roman Congregations, Volume X, page 492; in which the Pontifical laws speak of the force of obligating, which is exercised by the resolutions of the Holy See. And therefore, in the opinion of that Congregation, the resolutions have the force of a general law. We are certain that what is elucidated there applies to the case proposed, as it should apply to all similar cases; which the first Consultor

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did not maintain.

[*Latin ed. p. 262*]

262 MELITEN. 1. A public cemetery has always been considered to be under the jurisdiction of the parish priests; and, by a legal fiction, as part of the parish district: therefore, it would be absurd for others to exercise acts of jurisdiction therein. The Consultor responded, refuting the argument by stating: with regard to public cemeteries belonging to Regular Churches, according to the resolutions of the Holy Congregations, they ought to be considered, by a legal fiction, as being subject to the jurisdiction of the Regulars, and as part of the exempt district. Therefore, it would be legally absurd for the parish priests to exercise acts of jurisdiction therein. Furthermore, the dispositions of the civil government, and of the Bishop, are of no avail in this matter, and must yield to the dispositions of the Apostolic See. Moreover, if the dispositions of the civil government are carefully examined, and if the Ordinary does not exclude this right, but rather includes it. 2. The reason presented by the parish priests of Meliten is that the right of the Regular Churches to bring bodies to the cemetery has never before been called into question. The Consultor responded that this is the same reason presented by the parish priests of Cava de' Tirreni: for they used to take the bodies to the doors of the churches, in order to bring them to the cemetery, and this right was recognized by the guardians at that time, until the previous year. Despite these circumstances, the Most Reverend Fathers, on September 17, 1880, ruled in favor of the Regulars. Thus, these circumstances do not prevent the aforementioned resolution from being applied to Meliten as well, now that it is certain that the parish priests have been granted a right proper to the Regulars. With these things noted, the judgment of the Fathers was submitted to the following question: Can the resolutions of this Holy Congregation concerning Funerals and emoluments of the day of September 17, 1880, in Cava de' Tirreni and Sarnen, or of the Order of the Observant Minorites, be applied to Meliten? RESOLUTION. After due deliberation, the Sacred Congregation of Bishops and Regulars, under the date of September 22, 1882, decided to respond:

[*Latin ed. p. 263*]

MEUTEN. Affirmative. From which it may be gathered: I. That the Sacred Congregations, acting by mandate and in the name of the Most Holy Pontiff, have the power to define and determine what the law is for every similar case, when they judge a particular petition or fact. II. Therefore, according to the sounder opinion of the Doctors, the resolutions of the Holy Congregations, even though given for singular cases, possess the force of general law, and bind for similar cases. III. This judgment is confirmed by a resolution given in a particular case; for it is decided that the resolution given in the cases of Caven and Sarnen ought to be applied to the case of

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the Maltese parish priests, being similar. IV. Therefore, a public cemetery can be considered, by a legal fiction, as part of the parochial district, with regard to those who do not have their own burial ground; but not with regard to those who have burials in exempt churches: for even with regard to these, the public cemetery becomes, by a legal fiction, part of the district of the exempt church; and only the Regulars have the right to move bodies from their churches to the public cemetery, without the parish priest.

[*Latin ed. p. 264*]

264 APPENDIX IV. IN WHICH ARE LISTED THE OFFICES AND MISSES OF THE SAINTS, WHOSE FEASTS WERE EXTENDED TO THE UNIVERSAL CHURCH BY THE MOST HOLY POPE LEO XIII.

The Offices of the Saints, extended by the Most Holy Pope Leo XIII by a Brief dated July 28, 1882, to the universal Church, are as follows:

ON THE FEAST DAY.

FEBRUARY 1. Reading from the writings of Saint Cyril, Bishop of Alexandrinus, Confessor, and Doctor of the Church. *De Communione*, paragraphs 1-5, and following.

Cyril of Alexandrinus, whose teachings are confirmed not only by testimony, but also by the acts of the ecumenical Councils of Ephesus and Chalcedonensis, was born of illustrious parents, and was the nephew of Theophilus, Bishop of Alexandrinus. Even as a young man, he displayed outstanding qualities of intellect. Having been thoroughly instructed in letters and sciences, he went to John, Bishop of Hierosolymitanum, to be instructed in the Christian faith. After returning to Alexandrinus, upon the death of Theophilus, he was appointed to his see; and in this office, he so faithfully exemplified the form of a good shepherd, as defined by the Apostle, that he deservedly attained the glory of a most holy prelate.

Confessor. In the hymn, the third verse is changed. In both Vespers, the Antiphon *O Doctor*.

Prayer. O God, who made blessed Cyril, Thy Confessor and Bishop, and a staunch defender of the most blessed Virgin Mary, Thy divine Mother, grant, through his intercession, that those who truly believe in her as the Mother of God may be saved by her protection. Through the same Lord. Amen.

I. In the Nocturn, the readings for the day are: in the Quarantena, *Sapientia*; for Doctors, readings 4-6.

II. Reading 5. Zealous for the salvation of souls, he devoted all his efforts to the care of the flock entrusted to him, so that they might be strengthened

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in the faith.

[*Latin ed. p. 265*]

to preserve the integrity of morals, and to defend it from the poisonous influences of the unfaithful and heretics. Hence, at that time, the Novatians were expelled from the city, and the Jews, who, inflamed with fury, had conspired to slaughter Christians, were punished according to the laws. Furthermore, Cyril showed a singular zeal for the safety of the Catholic faith against Nestorius, the Bishop of Constantinople, who asserted that Jesus Christ, born of the Virgin Mary, was only a man, and that divinity was conferred upon Him for His merits; having vainly attempted to correct him, he denounced him to the Holy Pope Celestine. Reading VI. Celestine, having been delegated with authority, presided over the Council of Ephesus, in which the Nestorian heresy was thoroughly condemned; Nestorius was condemned and deposed from his position, and the Catholic dogma concerning the one Christ, and that divine person, and the divine motherhood of the Virgin Mary, was affirmed; the entire populace rejoiced, displaying incredible joy, and escorted the Bishops home with blazing torches. But for this reason, Cyril was subjected to numerous calumnies, injuries, and persecutions instigated by Nestorius and his supporters; which he bore with the greatest patience, so that, concerned only with the faith, he might hold nothing in contempt (1 Corinthians 8:11) and that the heretics might be rendered worthless. Finally, having performed great labors for the Church of God, and having published numerous writings, both to refute the Gentiles and heretics, and to explain the Holy Scriptures and the Catholic dogmas, he peacefully departed this life in the year four hundred and forty-four, after thirty-two years of episcopacy. Leo XIII, the Supreme Pontiff, extended the office and the Mass of this most illustrious defender of the Catholic faith and light of the Eastern Church, to the entire Church. In III. Nocturn. Readings from the Homily of St. Augustine, Bishop of Hippo: "The Lord shows in the Gospel: You are the salt of the earth," concerning Doctors, chapter VIII. Response: In medio. On the XVIII day of March. St. Cyril, Bishop of Jerusalem, Confessor, and Doctor of the Church. Duplex, from the Common Office of Confessors, Pontiff, with the following: * In both Vespers, the Antiphon: "O Doctor." The Prayer: "O God, from whom all good things come, we humbly beseech You, through the intercession of blessed Cyril, the Pontiff, to grant that we may know You alone as the true God, and Jesus Christ, whom You have sent."

[*Latin ed. p. 266*]

266 APPENDIX. We shall merit, perpetually, to be numbered among the sheep, who hear His voice. Through the same Lord. In the First Nocturne. Readings from the Office of Readings. First, the Forty-fourth Psalm. In a passage outside of Scripture. In the Second Nocturne. Reading IV. Cyril

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of Jerusalem, from his tender years, devoted to the study of the divine Scriptures, so advanced in their knowledge that he became a staunch defender of the orthodox faith. Imbued with monastic institutions, he desired to dedicate himself to perpetual continence, and to a life of every kind of austerity. After being ordained a priest by the holy Maximus, Bishop of Jerusalem, he fulfilled the office of preaching the divine word to the faithful and instructing the catechumens with the greatest zeal, and he wrote truly wonderful catechses, in which he encompassed the entire ecclesiastical doctrine clearly and abundantly, and he defended the individual dogmas of the religion solidly against the enemies of the faith. Thus, he elucidated and discussed matters so distinctly that he not only refuted heresies that had already arisen, but also foresaw and overturned those that were to come, as he demonstrated by asserting the real presence of the Body and Blood of Christ in the wonderful Sacrament of the Eucharist. After the death of the holy Maximus, he was appointed to his place by the bishops of the province. Reading V. As Bishop, he suffered many injuries and calamities, not unlike the blessed Athanasius, who was his contemporary, on account of the faith, from the Arian factions. For, bearing with ill grace Cyril's firm opposition to their heresies, they attacked him with calumnies, and they removed him from his seat in the council. To escape their fury, he fled to Tarsus in Cilicia, and as long as Constantius lived, he endured the rigor of exile. After his death, when the Apostate Julian came to power, Cyril was able to return to Jerusalem, where, with ardent zeal, he devoted himself to restoring his flock from errors and vices. But again, under the Emperor Valens, he was forced into exile, until, when peace was restored to the Church by Theodosius the Great, and the cruelty and audacity of the Arians were suppressed, he was received by the same Emperor with honors, as a most valiant athlete of Christ, and restored to his seat. How diligently and piously he fulfilled the duties of his high office is clearly evident from the flourishing state of the Church of Jerusalem at that time, which Saint Basil describes, having visited the holy places, and having stayed there for some time.

[*Latin ed. p. 267*]

APPENDIX IV. Lectio V vi. We have received as tradition that the sanctity of this Prelate was illustrated by heavenly signs from God. Among these, a remarkable apparition of the Cross, shining with the brilliance of the sun's rays, is remembered, which adorned the beginning of his episcopate. Numerous, both pagan and Christian, eyewitnesses testified to this, including Cyril himself, who, after the first graces were rendered to God in the Church, recounted this event in a letter to Emperor Constantius. No less worthy of admiration is the fact that, while the Jews, at the command of the impious Emperor Julian, were attempting to restore the temple that Titus had overthrown, a violent earthquake occurred, and immense flames erupted from the earth, consuming everything by fire, so that the

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Jews and Julian were terrified and abandoned the undertaking; as Cyril had undoubtedly foretold. He later attended the Second Council of Constantinople, shortly before his death, at which the heresy of Macedonius, and again Arianism, were condemned. And returning to Jerusalem, he peacefully departed this life, in his seventy-sixth year, in the thirty-fifth year of his episcopate. His Office and Mass were ordered to be celebrated throughout the Church by Leo XIII, the Supreme Pontiff.

267 IN III. NOCTURNO. Reading from the holy Gospel according to Matthew. Lectio vii. Chapter 10. At that time: Jesus said to his disciples: When they persecute you in one city, flee to another. And the rest. Homily of Saint Athanasius, Bishop. In his Apology concerning his flight, ant. med. In the law, it was commanded that cities of refuge should be established, so that those who, however they might be sought after for death, might be preserved. Furthermore, in the consummation of the ages, when the very Word of the Father had arrived, which had previously been spoken to Moses, He gave this command again: When they persecute you in one city, flee to another. And shortly after, He added: When you see the abomination of desolation, which was spoken of by the prophet Daniel, standing in the holy place (let the reader understand), then let those who are in Judea flee to the mountains; and let him who is on the roof not go down to take anything from his house; and let him who is in the field not turn back to take his cloak.

[*Latin ed. p. 268*]

268 APPENDIX IV. Lectio viii* Since the Saints knew this, they maintained such a way of life. For what the Lord now commands, He also spoke of before His coming in the flesh, among the Saints: and this way of life leads men to perfection. For whatever God commands, it must be done in all things. Therefore, even the Word Himself, made man for our sake, did not consider it unworthy to conceal Himself, to flee when persecuted, and to avoid snares; but when He Himself had appointed the time in which He wished to suffer bodily for all, He willingly surrendered Himself to those who lay in wait. In the middle, for the Doctors. H Lectio APRIL 14TH. OF THE DOUBLE MARTYRDOM OF SAINT JUSTIN. All concerning the Commemoration of one Martyr, except what follows. Oratio ix. But truly, the holy men, having also learned this from the Savior (for from Him, both before and always, all were led), when confronted by persecutors, they fought legitimately, they fled, and when questioned by them, they hid themselves. For since they did not know the end of the time appointed for them by divine providence, they did not wish to surrender themselves rashly to those who lay in wait; but rather, when they knew that it is written, that the lot of men is in the hand of God, and that the Lord mortifies and vivifies, they persevered to the end, going about, as the Apostle says, in rough garments and goat skins, poor, afflicted, wandering in the wilderness, and

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hiding in caves and dens of the earth, until either the appointed time of death should come, or He, who appointed that time, God, would speak with them, and restrain the persecutors, or certainly deliver them to the persecutors, whatever might please Him. May He, who through the folly of the cross, wonderfully taught the eminent knowledge of Jesus Christ to the blessed Martyr Justin: grant that, through his intercession, we may attain the firmness of faith, having been delivered from the encirclement of errors. Through the same Lord. D In the First Nocturn, Scriptural readings occur. In the Second Nocturn. Lectio I iv. Justin was the son of Priscus, of Greek origin, from Flavia, near Naples, in Syria.

[*Latin ed. p. 269*]

269 APPEN ixiv. Born in Palestine, he spent his youth immersed in all studies of literature. Having become a man, he was so captivated by the love of philosophy that, in order to attain the truth, he joined the names of all the philosophical schools that existed, and examined their precepts. But when he found only deceptive wisdom and error in them, he was instructed by a certain unknown old man, through a heavenly revelation and a venerable appearance, and embraced the philosophy of true Christian faith. From then on, having the books of Holy Scripture constantly before him, a divine fire was kindled in his soul through their meditation, so that, with the power of his learning, he attained the eminent knowledge of Jesus Christ, and wrote many volumes to explain and spread the Christian faith.

Reading v. Among Justin's most excellent works are two *Apologies* of the Christian Faith, which, having presented the same to the Senate and the Emperors Antoninus Pius, and his sons, as well as to Marcus Antoninus Verus, and Lucius Aurelius Commodus, and having offered them to the most devout servants of Christ, and having strenuously defended them through debate, he obtained that a public decree of the Prince should restrain the slaughter of Christians. But Justin was not equal to this. For Crescent, a Cynic, whom he had refuted for his infamous life and morals, accused him of treason, and he was seized by his accomplices. Brought before the Praeses in Rome, named Rusticus, when this asked him what the precepts of the Christians were, he confessed this good confession before many witnesses. "The doctrine," he said, "which we Christians hold with reverence, is this: that we believe in one God, the Creator and Maker of all things visible and invisible; and we confess our Lord Jesus Christ, the Son of God, foretold by the prophets, who is about to be the judge of all mankind."

Reading vi. Since Justin had openly explained in his first *Apology* how Christians met for worship, and what the mysteries of these sacred gatherings were, in order to refute the calumnies of the pagans, the Praeses inquired from him in what place he himself and the other faithful of this city met. But Justin, being discreet, did not reveal the places of assembly, lest

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the sacred places and the brethren be harmed, but only indicated his own dwelling, where he was accustomed to live and to instruct his disciples, near the famous title of the Shepherd in the houses of Pudens. Finally, the Praeses gave him the choice either to sacrifice to the gods, or...

[*Latin ed. p. 270*]

270 APPENDIX, or even that he should be beaten with whips throughout the entire body. When the unyielding defender of the faith asserted that he had always made vows to endure torments for the sake of the Lord Jesus Christ, from whom he expected a great reward in heaven, the President pronounced the capital sentence upon him. Thus, the marvelous Philosopher, after praising God, and after the blows, crowned with the blood shed for Christ, was completed his glorious martyrdom. Certain faithful individuals secretly took up his body and buried it in a suitable place. Leo XIII, the thirteenth Supreme Pontiff, ordered that the Office and the Mass be celebrated throughout the entire Church in his honor. IN III. NOCTURNO. Reading from the holy Gospel according to Luke. Reading VII. Chapter 12. "At that time: Jesus said to his disciples: There is nothing hidden that will not be revealed; nor anything secret that will not be known. And the rest." Homily of St. John Chrysostom, Homily I, on Matthew 26 and following. "Nothing is hidden that will not be revealed, nor is anything concealed that will not be known. But what is said here is this: It is indeed sufficient for your consolation if I, your Master and Lord, am a companion in your trials. But if, even after hearing these things, you still doubt, consider also this: you will not be long freed from this suspicion. Why do you take this so badly? Because you are called deceivers and tricksters? But wait a little, and those who are the saviors and benefactors of the world will proclaim you to all. But the time will come when all things that were obscure will be revealed, and the calumny of those men will be exposed, and your virtue will become evident. For when you are confirmed by your very actions to be saviors and benefactors, and when your virtue is evident to all, people will not pay attention to the words of those men, but to the truth of the matter: for they are indeed sycophants, liars, and blasphemers, while you will be found to be more splendid than the sun itself; for indeed, the passage of time will make you known, and the trumpet will proclaim you more clearly, and it will present to all men witnesses of your virtue. Therefore, let not those things that are said now discourage you, but let the hope of future blessings strengthen you. For they cannot hide those things that concern you." Reading VIII. "And after he had freed them from all anguish, fear, and anxiety, and had made them superior to all reproaches, he finally speaks to them about proclaiming the truth freely: for he says: What I tell you in darkness, say in the light; and what you hear in your ear, proclaim

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on the housetops."

[*Latin ed. p. 271*]

IX iv. Preach upon the rooftops. Although there were no shadows when He said this, nor did He speak into the ear: but these words are spoken hyperbolically. For since He was speaking only to those present, and in a small corner of Palestine, therefore He says: "in darkness and in the ear," comparing this manner of speaking with the confidence with which He would later instruct them. "Go not into any city, nor town, wherein I have not been: but go ye, and teach all nations." Not in one, two, or three cities, but throughout the whole world, traversing land and sea, inhabited and uninhabited places, and to tyrants, to peoples, to philosophers, to rhetoricians, speak all things with great confidence. Therefore, He said "upon the rooftops" and "in the light" without any subterfuge, and with all freedom. Lesson ix. In the season of He Lent, from the Homily for the Feria, concerning the Holy Martyrs, as in the Roman Breviary. If another day is to be celebrated, the following lesson will be read: And after He had raised their spirits, He again foretells the dangers, elevating their minds, and making them greater in all things. For what does He say? "And fear ye not them that kill the body, and are not able to kill the soul." Do you see how He makes them superior in all things, not only to cares, not only to curses, to dangers, to envies, but even to the most terrible death itself? Not simply death, but even violent death? And He did not say, "You will be killed," but with a magnificence fitting to the whole matter, He declared all things. "Fear not," saying, "them that kill the body, and are not able to kill the soul," but rather, "Fear him who can destroy both soul and body in hell." Thus, He turns the discourse around, as He always does. What does He intend? "Are you afraid of death, and therefore are you less eager to preach?" But rather, preach for this very reason, because you fear death. For that will truly deliver you from death. For even if they are killed, they will not separate them from a better part, even if they try with all their might. Therefore, He did not say: "They cannot kill the soul," but: "They are not able to kill." For even if they wished, they would not separate it. And therefore, if you fear punishment, fear that far more. Do you see how He does not promise to deliver them from death, but allows them to die, in order to give them greater things than if He did not allow it? For it is far greater to persuade that death is to be hoped for, than to deliver from death.

[*Latin ed. p. 272*]

APPENDIX IV. 272 On the twenty-eighth of May, the feast of Saint Augustine, Bishop and Confessor. He invited all from the community of monks, except for those following, to his metropolitan city, and generously granted them the opportunity to remain there and preach Christ. Therefore,

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the holy man built an oratory near Canterbury, where he resided for some time, and he and his companions emulated the apostolic way of life. In the hymn, the third verse of the Confessor is changed. Prayer: O Lord, who deigned to illuminate the English people with the preaching and miracles of your blessed Confessor and Bishop, Augustine, grant that, through his intercession, the hearts of the erring may return to the unity of your truth, and that we may be united in your will. Through the Lord. D In I. Scripture: Nocturno. Readings occurrente. de IN II. Nocturno. Reading iv. Augustine, in Rome, in the Lateran monastery, along with nearly forty monks, was sent by Gregory the Great to England in the year five hundred and ninety-seventh, to convert those people to Christ. At that time, King Ethellred was the most powerful ruler in Canterbury, who, upon hearing of the arrival of Augustine, received him and his companions. Through the preaching of heavenly doctrine, numerous miracles, and the example of his life, Augustine so impressed those islanders that he converted many of them to the Christian faith, and finally, he converted the king himself, whom he baptized along with a countless number of his people at the sacred font, to the great joy of Berthae, the royal wife, who was a Christian. At one time, on the feast of the Nativity of the Lord, he administered baptism to more than ten thousand people in the river Eboraci, and it is recorded that those among them who were afflicted with some illness also received healing of the body along with the salvation of their souls. By order of Gregory, he was ordained a Bishop and established the see of Canterbury in the Church of the Savior, which he himself had built, and he placed monks to assist him in his work. He also built the monastery of Saint Peter, which was later named after him, in the suburbs. The same Gregory granted him the use of the pallium, with the authority to establish the ecclesiastical hierarchy in England, by which he also appointed a new worker.

[*Latin ed. p. 273*]

APPENDIX 273. He sent men from Rome, namely Mellitus, Justus, and Ruinianus. ON THE FOURTEENTH OF NOVEMBER. OF SAINT JOSEPHAT, BISHOP AND MARTYR. Reading VI. After having arranged the affairs of his Church, Augustine held a synod with the bishops and doctors of the ancient Britons, who in the celebration of Easter and other rites had long dissented from the Church of Rome. But since he could not move them, either by the authority of the Apostolic See, nor by miracles, to cease their dissent, he foretold their ruin to them with prophetic spirit. Finally, after having exerted himself greatly for Christ, and being renowned for miracles, after having appointed Mellitus as the head of the Church of London, and Justus to the Church of Rochester, he departed to Heaven on the seventh day before June, during the reign of King Ethelburt, and was buried in the monastery of Saint Peter, which afterwards became

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the burial place of the archbishops of Canterbury and of several kings. The English people followed his cult with fervent zeal, and Leo XIII, the Supreme Pontiff, extended his Office and Mass to the entire Church. In the First Nocturn, Readings from the Homily on the Gospel, designated by the Lord, from the Collection of Gospels. To... tomorrow. In the Office of a single Martyr, except for the following. Prayer. Inflame, we beseech Thee, O Lord, in Thy Church the Spirit, by which the blessed Josaphat, Martyr and Thy Pontiff, laid down his life for his sheep: that, through his intercession, we also, moved and strengthened by the same Spirit, may not fear to lay down our lives for our brethren. Through the Lord... in the unity of the same Spirit. In the First Nocturn, Readings from the Scripture that occurs. IN THE SECOND NOCTURN. Reading IV. Josaphat Kuncewitus was born to noble and Catholic parents in Volhynia. When he was a young boy, he heard his mother speaking of the passion of Christ, and he received a wound in his heart from a dart that was launched from the side of the image of Jesus Crucified. Inflamed with the love of God, he began to devote himself to prayer and other pious works, so that, as he grew older, he would be an example and a source of admiration to others. At the age of twenty, he entered the monastery of Saint Basil and professed the monastic rule.

[*Latin ed. p. 274*]

274 APPENDIX IV. It is astonishing what progress he made in evangelical perfection. Even in the coldest regions during the winter, he walked barefoot; he never used meat, and wine only out of obedience, and until his death, he afflicted his body with the roughest cilice. He preserved inviolate the flower of chastity, which he had vowed from his youth to the Virgin Mother of God. His virtue and doctrine spread so quickly that, although he was the younger, he was appointed prefect of the monastery of Byténii; soon after, he became Archimandrite of Vilna, and finally, Archbishop of Polocensis, against his will, but because of the insistence of Catholics. Increased in reading and dignity, he did not abandon his former way of life, but devoted himself only to the divine worship and the salvation of his entrusted flock. He was a staunch defender of the unity and truth of the Catholic faith, and he labored with all his might to bring schismatics and heretics back into communion with the See of the blessed Peter. He never ceased to defend the Supreme Pontiff and the fullness of his power from the most impudent calumnies and errors, both in his sermons and in his writings, with piety and doctrine. He vindicated the episcopal jurisdiction and the Church's goods usurped by laymen. It is incredible how many heretics he brought back into the bosom of the Mother Church. Moreover, it is most clearly testified by pontifical documents that he was a distinguished promoter of the union of the Greek Church with the Latin Church. In addition to these things, he generously contributed from his own resources to the

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restoration of the adornment of the temple of God, to the construction of buildings for sacred virgins, and to other pious works. He was so devoted to the poor that, when once he found nothing to give to a certain widow in need, he ordered his episcopal pallium, or omophorion, to be pawned. Reading VI. The increase in the Catholic faith so aroused the hatred of the most wicked men that, through a conspiracy, they sought to put this athlete of Christ to death; which he himself foretold in his sermon to the people. Therefore, when he had set out for Vitépsk for the purpose of a pastoral visitation, those archiepiscopal men invaded his dwelling; they attacked and struck down those who were in his way. Then the most gentle man came forward of his own accord, and, addressing them kindly, said, "My children, why are you killing my relatives? If you have anything against me, here I am." Then, with a sudden attack, they beat him with clubs, pierced him with arrows, and finally, with a terrible blow from a scythe, they killed him, and they proceeded to the river; on the twelfth day of November of the year sixteen hundred and [illegible].

[*Latin ed. p. 275*]

APPENDIX, the two thousand three hundred and forty-seventh, in the forty-third year of his age. The body, surrounded by a marvelous light, was raised from the depths of the riverbed. The blood of the Martyr proved most beneficial to those parricides, who, having been condemned to death, detested their schism and its crimes. After his death, this great Prelate shone with many miracles, and Urban VIII, the Supreme Pontiff, adorned him with the honors of the Blessed. On the third day before the Kalends of July, in the year one thousand eight hundred and sixty-seven, when the secular celebrations of the Princes of the Apostles were being held, before the Senate of the Fathers Cardinals, and in the presence of nearly five hundred Patriarchs, Metropolitans, and Bishops of every rite, who had come from all over the world, this defender of ecclesiastical unity was solemnly admitted to the order in the Basilica of the Saints in the Vatican. Leo XIII, the Supreme Pontiff, extended this office and Mass to the entire Church.

IN THE THIRD NIGHT OFFICE. Reading from the holy Gospel according to John. Reading VII. Chapter 10. At that time Jesus said to the Pharisees: "I am the good shepherd. The good shepherd giveth his life for his sheep." And the rest.

I IV. 275 Homily of Saint John Chrysostom. Homily 59 on John. "Indeed, most beloved, the prelacy of the Church is a great thing; and it requires much wisdom and strength, as Christ proposed, so that we may lay down our lives for the sheep, and never abandon them; so that we may resist the wolf vigorously. For this is the difference between a shepherd and a mercenary. The one cares for his own, despising the sheep; the other, despising his own, always watches over the safety of the sheep. Therefore,

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having demonstrated the example of the shepherd, He reminds us of two deceivers: the thief 'who steals and devours the sheep,' and the mercenary 'who allows them to be devoured, neither defending them.'

Reading VIII. "As Ezekiel rebuked you with these words: 'Woe to the shepherds of Israel, because you have not fed yourselves? Because you have not fed the flock? But you have devoured them, and have made them a desolation with your pastures.' Because you have not led them out to the pastures that were good, nor sought out those that had perished; nor have you healed the broken, nor restored the weak; but you have devoured them, and have not fed them. The same Paul signifies in other words: 'All that seek their own things, are not of Jesus Christ.'"

[*Latin ed. p. 276*]

APPENDIX IV. 276 He demonstrates that both groups are distinct from each other: from those who come to destroy others, when He says that He came for this purpose, that they might have life; but from those who neglected to rescue the sheep from the wolves, He says that He lays down His life for them, that the sheep may not perish. For when the Jews wished to kill Him, He did not cease from teaching and delivering over those who believed, but persevered, and brought about death; therefore, He frequently says: "I am the good shepherd. The good shepherd giveth his life for his sheep." These things, which might seem to offer no firm testimony (for He would demonstrate shortly that He would lay down His life; and that they would have life and have it more abundantly, would be fulfilled in the future age), confirm each other. Masses celebrated in honor of the saints whose feasts were extended to the entire Church by the Most Holy Pope Leo XIII through a Brief dated July 28, 1882. Secret. ON THE NINTH DAY OF FEBRUARY, FEAST OF SAINT CYRIL, BISHOP OF ALEXANDRIA, CONFESSOR, AND DOCTOR OF THE CHURCH, Mass is celebrated in the order of the Common of Doctors, with the following prayers. And the Creed is said. Prayer. O God, who made blessed Cyril, Your Confessor and Pope, and the unyielding defender of the most blessed Virgin Mary, grant, through his intercession, that those who truly believe in her as the Mother of God may be saved by her protection. Through the same Lord. Almighty God, mercifully behold our offerings: and, through the intercession of blessed Cyril, grant that we may be worthy to worthily receive Your only Son, Jesus Christ, our Lord, in eternal glory with You. Who lives and reigns. After Communion. Having been nourished by the divine mysteries, we humbly implore You, Lord: that, aided by the examples and merits of blessed Cyril, the Pope, we may be able to worthily serve the most holy Mother of Your only Son. Who lives and reigns.

[*Latin ed. p. 277*]

ix iv. 277 The Lord shall be glorified. Many saints shall praise the wisdom

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of Cyril, and it shall not be blotted out for ever. The bishops of Jerusalem shall not forget him, and the name of the Confessor and Doctor of the Church shall be sought by generation after generation in the Introit of the Office. 15. The nations shall open their mouths and speak of his wisdom in the midst of the Church, and they shall praise him: and the Lord his God shall fill him with the spirit of wisdom and understanding. Graduale Ps. 36. The mouth of the just shall speak wisdom, and his tongue shall speak judgment. Ps. 91. It is good to confess to the Lord, and to sing praises to thy name, O Most High. f. Glory be to the Father. Oratio. Tractus Ps. 111. Blessed is the man who fears the Lord: he delights exceedingly in his commandments. f. In his seed shall be a mighty man in the land: after him shall be remembered the generation of the just. f. Glory and riches are in his house: and his justice abides for ever. Per ipsum Dominum. During the Paschal season, the reading from the Book of Wisdom Ecclesiasticus 39 is omitted, and instead, the following is said: Graduale, and then: Alleluia, alleluia. f. Eccli. 45. The Lord loved him because he loved him, and he made him, and he prepared him: he clothed him with the robe of glory. Alleluia. f. Osee. 14. The just shall flourish like a lily: and he shall blossom for ever before the Lord. Alleluia. Outside the Paschal season. Graduale Ps. 36. The mouth of the just shall speak wisdom, and his tongue shall speak judgment. f. The law of his God is in his heart: and his steps shall not be moved. f. Glory be to the Father. Alleluia, alleluia. On the eighteenth day of March.

[*Latin ed. p. 278*]

APPENDIX IT. 278 f. Eccli. 45. Dominus eum amavit, et ornavit eum: stolam gloriae induit eum. Alleluia. *Sequentia sancti Evangelii secundum Matthaeum.* Matth. 10. In illo tempore: Dixit Jesus discipulis suis: "Cum persequentur vos in civitate ista, fugite in aliam. Amen dico vobis, non consummabitis civitates Israel, donec veniat Filius hominis. Non est discipulus super magistrum, nec servus super dominum suum. Sufficit discipulo, ut sit sicut magister eius: et servo sicut dominus eius. Si patremfamilias Beelzebub vocaverunt; quanto magis domésticos eius? Ne ergo timueritis eos. Nihil enim est opertum, quod non revelabitur; et occultum, quod non scietur. Quod dico vobis in tenebris, dicite in lumine: et quod in aure auditis, praedicate super tecta. Et nolite timere eos, qui occidunt corpus, animam autem non possunt occidere: sed potius timete eum, qui potest et animam et corpus perdere in gehennam." Credo. *Offertorium, Ps. 91.* Iustus ut Pontificis et Confessoris tui Cyrilli, eam mundo corde suscipere studeamus. Per Dominum. *Communio.* Luc. 12. "Fidelis servus et prudens, quem constituit Dominus super familiam suam; ut det illis in tempore tritici mensuram." *Postcommunio.* Sacramenta Corporis et Sanguinis tui, quae sumpsimus, Domine Iesu Christe, beati Cyrilli Pontificis precibus, mentes et corda nostra sanctificent: ut divinae consortes naturae effici mereámur: Qui vivis. DIE XIV APRILIS SANCTI IUSTINI Martyris.

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Introitus. Ps. 118. ″Narraverunt mihi iniqui fabulationes, sed non ut lex tua: ego autem loquebar de testimoniis tuis in conspectu regum, et non confundebar. Alleluia, alleluia. Psal. ibid. Beati immaculati palma florebit: sicut cedrus, quae in Libano est, multiplicabitur. in via, qui ambulant in lege D omini.″ f. Gloria Patri. *Secreta. Oratio.* ″Réspice, Dómine, immaculatam hostiam, quam Tibi offerimus: et praesta: ut meritis beati Dei, qui per stultitiam crucis, eminentem Iesu Christi scientiam beatum Iusti num Mártyrem mirabiliter docuisti: eius...″

[*Latin ed. p. 279*]

Grant us, through the intercession of [Saint] Appenni, that, delivered from the snares of error, we may attain to firmness of faith. Through the same Lord. Reading from the Epistle of the blessed Apostle Paul to the Corinthians. 1 Corinthians, chapter 1. Brethren: For the word of the cross, to them indeed that perish, is foolishness: but to them that are saved, that is, to us, it is the power of God. For it is written: ″I will destroy the wisdom of the wise, and the prudence of the prudent I will reject.″ Where is the wise? where is the scribe? where is the disputer of this world? Did not God make the wisdom of this

world foolish? For since the world did not know God through wisdom, it pleased God through the foolishness of preaching to save believers. For Jews ask for signs, and Greeks seek after wisdom; but we preach Christ crucified, to Jews indeed a stumbling block, but to Gentiles a foolishness; but to those who are called, both Jews and Greeks, Christ the power of God, and the wisdom of God. For the foolishness of God is wiser than men; and the weakness of God is stronger than men. But you are from God, brought forth in Christ Jesus, who for us has been made wisdom from God, and righteousness, and sanctification, and redemption. Alleluia, alleluia. f. 1 Corinthians, chapter 3. The wisdom of this world is foolishness with God; for it is written: ″The Lord knows the thoughts of the wise, and they are vain.″ Alleluia. f. To the Philippians, chapter 3. But I count all things as loss for the sake of the surpassing knowledge of Christ Jesus my Lord, Alleluia. Outside of the Paschal time. Gradual. 1 Corinthians, chapter 3. The wisdom of this world is foolishness with God, for it is written: ″The Lord knows the thoughts of the wise, and they are vain.″ Alleluia. f. Ibid. 1. ″I will destroy the wisdom of the wise, and the prudence of the prudent I will reject.″ Alleluia, alleluia. f. Philippians, chapter 3. But I count all things as loss for the sake of the surpassing knowledge of Christ Jesus my Lord. Alleluia. After the Alleluia, the seventy-sixth Psalm is sung, omitting the following verse, and then the Tract is sung. 1 Corinthians, chapter 2. ″I did not judge myself to know anything among you except Jesus Christ, and this crucified.″ f. ″We preach the wisdom of God in a mystery, which was hidden from the ages, which God predestined for our glory.″ f. ″Which none of the princes of this world knew.″ For had they known it, they would

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not have crucified the Lord of glory. Following the Holy Gospel according to Luke. Luke, chapter 12. At that time: Jesus said...

[*Latin ed. p. 280*]

280 APPENDIX IV. to his disciples: "There is nothing hidden that will not be revealed; nor is anything concealed that will not be known." For whatever you have spoken in darkness shall be spoken in light, and what you have whispered in the ear in secret places shall be proclaimed upon the housetops. But I say to you, friends, do not fear those who kill the body, and after this have nothing more that they can do. But I will show you whom you should fear: fear him who, after he has killed, has power to cast into hell; yes, I say to you, fear God. Are not five sparrows sold for two pennies? And not one of them is forgotten before God. But even the hairs of your head are all numbered. Therefore do not be afraid; you are of more value than many sparrows. But I tell you, whoever acknowledges me before men, the Son of man will also acknowledge him before the angels of God.

Offering. 1 Corinthians 2: "For I determined not to know anything among you except Jesus Christ, and him crucified." Alleluia.

Secret. "Accept, O Lord God, our offerings; whose wondrous mystery the holy Martyr Justin strenuously defends against the calumnies of the impious. Through the Lord."

Communion. 2 Timothy 4: "There is laid up for me a crown of righteousness, which the Lord, the just judge, will award to me on that day." Alleluia.

Postcommunion. "Refreshed by heavenly nourishment, we humbly beseech you, O Lord, that, following the example of your blessed Martyr Justin, we may always remain in thanksgiving for the gifts received. Through the Lord."

ON THE TWENTY-EIGHTH OF MAY, OF THE HOLY BISHOP AUGUSTINE.

Introit. Confessor. Psalm 131. "Let your priests clothe themselves with justice, and let your saints rejoice: for David your servant, you have not turned away the face of your Christ." Psalm Ibid. "Remember, O Lord, David, and all his meekness." Glory be to the Father.

Prayer. "O God, who willed that the nations of the English should be illuminated by the true light of faith through the preaching and miracles of your blessed Augustine, your Confessor and Bishop: grant that, through his intercession, the hearts of the erring may return to the unity of your truth, and that we may be united in your will. Through the Lord."

Reading from the Epistle of the blessed Apostle Paul to the Thessalonica.

[*Latin ed. p. 281*]

APPENDIX. 1 Thessalonians 2. Brothers: But having suffered many

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things before and been shamefully treated, (as you know) at Philippi, we had confidence in our God, to speak unto you the gospel of God in much carefulness. For our exhortation was not of error, nor of uncleanness, nor in deceit, but as we have been approved by God, that we should minister the Gospel: so we speak, not as pleasing men, but unto God, who proves our hearts. For neither at any time did we speak unto you with flattering words, as you know; nor did we invent excuses for covetousness: God is witness. Neither did we seek glory from men, neither from you, nor from others; for Whereas we might have been burdensome to you, as the apostles of Christ: but we became little ones in the midst of you, as if a nurse should cherish her children: "1Thess 2:7". Having suffered many things before and been shamefully treated, (as you know) at Philippi, we had confidence in our God, to speak unto you the gospel of God in much carefulness. Wherefore, being absent in body, but present in spirit, we labored much for you, and travailed in the night and day, that we might not be burdensome to any of you, preaching the Gospel of God among you.

Gradual. Psalm 112. I will clothe the priests of Thine with salvation: and Thy saints shall rejoice with gladness. "Heb 7:17". For he testifieth. "And after these things, the Lord appointed also other seventy-two. And he sent them two and two before his face into every city and place whither he himself was to come."

Psalm 113. I have prepared a lamp for my Christ. Alleluia, alleluia.

Psalm 114. The Lord hath sworn, and He will not repent: Thou art a priest for ever, according to the order of Melchisedech. Alleluia.

During the Paschal season, the Gradual is omitted, and in its place is said: Alleluia, alleluia.

Psalm 114. The Lord hath sworn, and He will not repent: Thou art a priest for ever, according to the order of Melchisedech. Alleluia.

Ecclesiasticus 45. The Lord loved him, and adorned him: He clothed him with a robe of glory. Alleluia.

After the Septuagesima, the Alleluia and the following verse are omitted, and the following is said:

Tract. Psalm 111. Blessed is the man that fears the Lord: who delights exceedingly in His commandments.

Potent in the earth shall be his seed: and the race of the just shall be blessed.

Glory and riches shall be in his house: and his justice shall remain for ever and ever.

Sequence of the Holy Gospel according to Luke. Luke 10. At that time: The Lord appointed also other seventy-two. And he sent them two and two before his face into every city and place whither he himself was to

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come. And he said to his disciples, "The harvest indeed is great, but the labourers are few." Therefore, say to the Lord of the harvest, that he send forth labourers into his harvest. Go: for behold, I send you forth as lambs in the midst of wolves. Carry neither purse, nor script, nor shoes.

[*Latin ed. p. 282*]

282 APPENDIX l Y. neither shoes: and you shall salute no man on the way. When you enter into any house, first say: Peace to this house: and if the son of peace be there, your peace shall rest upon him: but if not, it shall return to you. But remain in the same house, eating and drinking those things which are with them: for the labourer is worthy of his reward. Do not pass from house to house. And into whatever city you enter, and they receive you, eat those things which are set before you: and heal the sick that are therein, and say to them: The kingdom of God has approached you. Offering. Ps. 88. My truth, and my mercy shall be with him: and in my name his horn shall be exalted. Secret. We offer a sacrifice to you, O Lord, on the solemnity of the blessed Augustine, your Pope and Confessor, humbly beseeching that those sheep which have gone astray may be returned to one fold, and may be nourished by this salutary food. Through the Lord. Communion. Matth. 24. Blessed is that servant, whom when the Lord comes, he finds watching: and verily I say to you, he shall make him ruler over all his goods. After Communion, having been refreshed by the saving Host, we humbly beseech you, O Lord, that through the intercession of the blessed Augustine, sacrifice may be perpetually offered to your name in every place. Through the Lord. ON THE FOURTEENTH DAY OF NOVEMBER, OF THE BLESSED BISHOPS IOSAPHAT AND THE MARTYR. Introit. Let all rejoice in the Lord, celebrating the feast day under the honor of the blessed Martyr Josaphat; whose passion the Angels rejoice in, and praise the Son of God. Ps. 32. Exult ye, ye just, in the Lord: praise is comely for the upright. } . Glory be to the Father. Prayer. Rouse, we beseech you, O Lord, in your Church the Spirit, by which the blessed Josaphat, your Martyr and Pope, laid down his soul for the sheep: that, through his intercession, we also, moved and strengthened by the same Spirit, may not fear to lay down our souls for our brethren. Through the Lord, in the unity of the same Spirit. Reading from the Epistle of blessed Paul the Apostle to the Hebrews. Hebr. 5. Brethren: Every high priest taken from among men is constituted in behalf of men in things that relate to God, that he may offer gifts and sacrifices for sins: who can be merciful to the ignorant and erring, because he himself also is compassed with infirmity.

[*Latin ed. p. 283*]

X iv s 283 f. Quoniam praevenisti eum, cùm datus est infirmitate: et proin benedictionibus dulcedinis. Pterea debet, quemadmodum pro f. Posuisti in capite eius coronam de lapide pretioso, ita etiam et pro semetipso offerre

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pro peccatis. Nec quisquam sumit sibi honorem, sed qui vocatur a Deo, tamquam Aaron. Sequentia sancti Evangelii secundum Ioannem, Ioan. 10. In illo tempore: Dixit Iesus Pharisaeis: I am the good shepherd. The good shepherd giveth his life for his sheep. Mercenarius autem, cuius non sunt oves propriae, videt lupum venientem, et dimittit oves, et fugit: et lupus rapit, et dispergit oves: mercenarius fugit, quia mercenarius est, et non pertinet ad eum de ovibus. Ego sum pastor bonus: et cognosco meas, et meae cognoscunt me. Sicut novit me Pater, et ego agnosco Patrem: et animam meam pono pro ovis meis. Et alias oves habeo, quae non sunt ex hoc ovili: et illas oportet me adducere, et vocem meam audient, et fiet unum ovile, et unus pastor. Offertorium. Ioan. 15. Maiorem caritatem nemo habet, ut animam suam ponat quis pro amicis suis.

*Post Septuagesimum, omissis Alleluia et versu sequenti, dicitur:

Tractus. Ps. 20. Desiderium animae eius tribuisti ei: et voluntate labiorum eius non fraudasti eum.

Clementissime Deus, munera haec tua benedictione perfúnde, et nos in fide confirma: quam sanctus Iosaphat Martyr et Pontifex tuus, effuso sanguine, adséruit. Per Dominum.

[*Latin ed. p. 284*]

284 APPENDIX IV. Communion. John 10. "I am the good shepherd, and I know my sheep, and they know me." Postcommunion. "May the life of the holy martyr Josaphat, and of your pontiff, always nourish us for the honor of the Church." "Lord, grant us through the Spirit the strength of this heavenly table."

FROM THE HOLY CONGREGATION, DECREE: On the sixth day of December, 1882, the Congregation of Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Pope Leo XIII and the Holy Apostolic See, concerning the condemnation, prohibition, expurgation, and permission of books of false doctrine, in the entire Christian Republic, having met in the Apostolic Palace at the Vatican on December 10, 1882, condemned and condemns, prohibits and prohibits, and ordered that the following works be referred to the Index of Prohibited Books:

GREGORIO, F. Nelle, Apulia. — A version from the German by Raffaele Mariano, with travel notes by the translator. Vo. Unico. — Florence, Barbèra, editor, 1882. Instruction, moral and civic. — The Citizen and the Man, for primary education. A work prepared in accordance with the official program, etc., by Jules Steeg, Deputy of the Gironde, Paris. Elements of moral and civic instruction, by Gabriel Compayré, Deputy, professor at the higher normal schools for teachers and mistresses, Paris.

[*Latin ed. p. 285*]

285. Moral and Civic Instruction for Young Girls, by Madame Henry

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Gréville. Paris, 1882. PAUL, Deputy of BERT, at the school. Member of the Institute. This work was adopted for civic instruction in the city of Paris. 1882. Reproduction of a dialogue recited in Acireale by Monsignor Genuardi, Bishop, with dedications to the Most Illustrious and Reverend Monsignor Guarino, Archbishop of Messines. Catania, 1882, prohibited by Decree of the Holy Office on July 19, 1882. The author of this laudable work (named Mauro) submitted it and it was disapproved. Therefore, no one, of whatever rank and condition, may dare to publish, or, having published, to read or circulate the aforementioned work, in any place, and in any language, but must deliver it to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to the MOST HOLY LORD OUR POPE XIII by me, the undersigned, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on December 10, 1882. FR. THOMAS M. CARD. MARTINELLI, Prefect. Fr. Hieronymus Pius Sacclieri, of the Order of Preachers, Secretary of the Holy Congregation of the Secret. Place for the Seal. In the City of Rome, on December 20, 1882, I, the undersigned, testify that the aforementioned was affixed and published. Vincentius Benaglia, Magistrate.

[*Latin ed. p. 286*]

286 EX S. CONGREGATIONE RITUUM: Approbation of the Scapular in honor of St. Michael the Archangel for the Sodality of the City of ROMANA. To the Governing Council of the Pious Union of the First Order of St. Michael the Archangel of the City, canonically erected in the distinguished Church of St. Angelus ad Porticum Octavium, commonly known as the Forum Piscium, the Sacred Congregation of Rites has declared that it is fitting to approve the scapular in honor of the same St. Michael, so that, as a badge of the Society, those faithful who are admitted into it may be designated and use it, – so that, fighting under the banner of so great a Leader, they may deserve to obtain victory over the malignant enemy. The Most Reverend and Right Reverend Fathers, Prefects of the Sacred Congregation of Rites, having held their ordinary meetings on this day at the Vatican, after hearing the report of the Most Reverend and Right Reverend Lord Cardinal Thomas Mary Martinelli, proponent of this cause, having carefully considered all matters, have decided to write the following: For the sake of clarity, a scapular has been reformed and printed with the image and words, in accordance with the will of the Most Holy. St. Michael. On March 28, 1882. Subsequently, a faithful report on these matters was made to the Most Holy Lord Our Pope Leo XIII by the undersigned Secretary, and His Holiness, approving the judgment of the Sacred Congregation, approved the use of the aforementioned scapular, in accordance with the judgment of the same Sacred Congregation, namely, with the reformed image of St. Michael printed on the scapular itself, in the manner in which

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the same Archangel is represented in the Church. – On April 20 of the same year.

D. CARDINALIS BARTOLINI, Placidus Palli, Servant of the Blesseds, Servant of the Pope, Prefect, Secretary.

DECREE: Concerning the canonization of the Blessed Salvator from Horta, a lay professed of the Order of Friars Minor of St. Francis of the Observance, in Calaritana. Since the Most Holy Lord Our Pope Leo XIII, through a Decree of the Sacred Congregation of Rites dated September 11 of the last year, granted that a petition presented by the Most Reverend Father Friar Bernardino of the Crypts of the Castle, a professed priest and General Postulator of the cause for the beatification of the Servants of God and the canonization of the Blesseds of the Order of Friars Minor of St. Francis of the Observance, should be considered in the ordinary meeting of the Sacred Congregation itself, for the purpose of obtaining...

[*Latin ed. p. 287*]

287 It seemed fitting that the cause of the aforementioned Blessed Savior, begun by Herta, might be resumed in its original state and with the same terms in which it was previously found. The Most Eminent and Reverend Cardinal Lucidus Maria Parocchi, Promoter of the same cause, presented a petition of this nature at the ordinary meetings of the Congregation held at the Vatican on this day. Furthermore, the Most Eminent and Reverend Fathers entrusted with the safeguarding of the sacred rites, after careful consideration, and after hearing the Most Reverend Father Augustine Caprara, Promoter of the Holy Faith, deemed it necessary to respond: "Let the cause be resumed in its original state and terms." On December 9, 1882. This decree of the Sacred Congregation was presented to the Most Holy Lord by the undersigned Secretary and, on the 14th of the same month and year, His Holiness approved and confirmed it. Cardinal Bartolini, Prefect, S.R.C. Father Lawrence Salvati, Secretary, S.R.C. DECREE of the Roman, Praenestinian, and Tridentine Congregations for the Beatification and Canonization of the Venerable Servant of God, Father Stephen Bellesini, a professed priest of the Order of Hermits of Saint Augustine, parish priest in the town of Genestani. On the eighth day before the Kalends of July, in the year 1882, it was benignly granted by the Most Holy Pope Leo XIII that, in an ordinary meeting of the Congregation of Sacred Rites, without the intervention or vote of the Consultors, the validity of all proceedings, both those carried out by ordinary and by apostolic authority, be examined in the cause of the beatification and canonization of the aforementioned Venerable Servant of God, Father Stephen Bellesini. Therefore, the Most Eminent and Reverend Cardinal Thomas Maria Martinelli, Promoter of this cause, at the request of the Reverend Father Sebastian Martinelli, General Postulator for the causes of beatification and canonization of the Servants of God of the Order of Hermits of Saint Augustine, in a special meeting of the aforemen-

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tioned Congregation, in accordance with the particular provisions of the same Most Holy Lord, published on November 20, 1878, and assembled at the Vatican on the aforementioned day, proposed the following question: "Whether it is established that the proceedings, both those carried out by apostolic and by ordinary authority, are valid; whether the witnesses have been duly and properly examined, and whether the testimonies have been legitimately obtained, in this case and for the purpose in question?" The Sacred Congregation, after careful examination of all matters, and after hearing the Most Reverend Father Augustine Caprara, Promoter of the Holy Faith, responded: "Affirmative, or It is established: with the understanding that, for the sake of caution and to remedy any possible defect, the Apostolic proceedings of Praenestino concerning virtues and miracles, in...

[*Latin ed. p. 288*]

288 species, because the office of Notary adjunct, held by James Coccia, had been fulfilled, who had previously undergone examination as a witness; and also because of the testimony of Father Nicholas Melchiorri, a witness in the 25th Ordinary Process of Rome, due to his examination not being repeated in the Apostolic Process. On July 29, 1882. These matters were faithfully reported to the Most Holy Lord, our Pope Leo XIII, and His Holiness, having approved the opinion of the Sacred Congregation, confirmed it, and deigned to benignly remedy the aforementioned deficiencies for the sake of caution. On August 3 of the same year. For the Most Eminent and Most Reverend Cardinal D. Bartolini, S.R.C., Prefect; Camillus Cardinal Di Pietro, Bishop of Ostia and Velletri; in the place of His Eminence, Lawrence Salvati, S.R.C., Secretary.

DECREE.

Concerning the Beatification and Canonization of the Venerable Servant of God, Sister Mary of the Incarnation, foundress of the Ursuline Monastery in the city of Quebec.

Present is the Most Reverend Prosper Bernardo Delpech, General Procurator of the Society of Missions to Foreign Lands of Paris, Postulator appointed for the cause of beatification and canonization of the aforementioned Venerable Servant of God, Sister Mary of the Incarnation. The undersigned Cardinal, Prefect of the Congregation of Sacred Rites, and promoter of this cause, in the ordinary meetings of the aforementioned Sacred Congregation, held this day at the Vatican, proposed the following question:

"Whether the judgment rendered by the Most Reverend Archbishop of Quebec concerning the cult of the aforementioned Venerable Servant of God, or concerning the obedience rendered to the decrees of the Most Holy Pope Urban VIII, should be confirmed in this case, and for the purpose of what is being considered."

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After due deliberation, and after hearing the voice and written opinion of the Reverend Father Augustine Caprara, Promoter of the Holy Office, it was judged: Affirmative, that is, the judgment should be confirmed.

On December 9, 1882.

Subsequently, these matters were faithfully reported to the Most Holy Lord, our Pope Leo XIII, by the undersigned Secretary, and His Holiness deigned to approve and confirm the decree of the Sacred Congregation on the 14th day of the same month and year.

L. S. D.

Cardinal Bartolini, S.R.C., Prefect.

Lawrence Salvati, S.R.C., Secretary.

[*Latin ed. p. 289*]

289 Letters from His Holiness Pope Leo XIII to the Most Reverend Archbishop of Dublin, in which he implores that the entire clergy of Ireland may take care to guide the minds of the citizens in those matters in which they are now tossed about by waves; he rejoices at the efforts made by the Bishops in favor of Catholic youth, and he commends the philosophy of Saint Thomas Aquinas to the young men of the seminaries (1). Beloved Son, greetings and the Apostolic blessing. We have received with great pleasure, as a sign of your affection and obedience, and that of other prelates of this region, the letters which you, at your own behest and in your name, sent to Us on the 4th of October. We are pleased by the concern you have shown for the welfare of Ireland, and by the advice which you conveyed in our letter of the 1st of August, concerning the popular movements that are stirring in this region, and we have judged it fitting to offer to our faithful children of Ireland a heartfelt tribute. Indeed, we are most grateful to you, our beloved son, and to the other Bishops of Ireland, for seeing with what zeal you strive, for the sake of your ministry, to calm the disturbances in your country, and to direct the wills of your faithful, and for the Catholic children who, with docility, receive your teachings, and whose minds, strengthened by Christian virtue, are not allowed to stray too far beyond the bounds of duty and religion. Although the faithful of Ireland give clear proof of their devotion to religion and their obedience to the Supreme Pastor, it is still necessary that they continue to keep before their eyes those truths which we have entrusted to them, since the adherents of corrupt societies, as has unfortunately happened in recent months, do not cease to place their hopes in wickedness, to inflame public passions, and, seeking remedies for evils that are more harmful than the evils themselves, pursue a course that leads not to salvation, but to ruin. (1) See the letters to the same Archbishop in this volume, page 97. Add. Tom. XV. fase. CLXXV. 19.

[*Latin ed. p. 290*]

290 Letters are necessary so that this faithful people may firmly hold in

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their minds, as we have already mentioned, that utility and honesty are the rule, and that the cause of justice and the homeland must be separated from the studies, councils, and works of iniquitous associations; and that it is right for the patient to lend their rights to those who act justly; and that divine providence may ensure that those who, through patience and their own efforts, pursue [good], may not enjoy the fruits of virtue, and that the wicked, from acts of wickedness against the homeland, from vain labors, and from negligence, may be subject to the severe judgments of God and of men. While we recall this from the desire that we have for the solace, tranquility, and prosperity of all of Ireland, we do not doubt, beloved sons, that you and your colleagues, always joined together with concordant minds and fraternal charity, will continue to provide salutary service, so that the faithful may understand that they have nothing in common with those who, while pursuing their own desires, abandon their homeland, bind themselves with grave sins, incite others to the same wickedness, and cause the republic to perish. We rejoice that you have so admirably fulfilled your priestly zeal, beloved sons, in that, considering the dangers and perils facing this Catholic youth, you have taken care to publish a pastoral letter, in which you publicly denounce such dangers, and you advise the faithful, and you consult for the benefit of their souls, as well as for the good of religion and the homeland. Furthermore, these very grave matters of pastoral duty so urgently require, for the sake of Ireland, that the men of the public and ecclesiastical order offer their assistance to their pastors, and that they faithfully devote their efforts to guiding the minds of citizens and suppressing public disturbances. However, in order to exercise this salutary power of the sacred ministry, especially in popular assemblies in which great zeal is shown for the public good, it seems opportune that those assemblies, to which the wisdom of age and experience have led, and which are therefore able to grant permission to those who use them rightly and honestly, should be attended, provided that they are moved only by prudence, and that they remain confident that the ecclesiastical authorities will grant them this, considering them to be firm men, to whom, in more mature counsel and with greater authority, it will be possible to resist the fallacious and unjust judgments of others, to uphold the reasons of their office, and to be defenders of the best interests. In this way and by this means, the priestly order, as a mirror of common salvation and a defense of the republic, which you have placed, will bring great benefits to the homeland, and will boast of those benefits.

[*Latin ed. p. 291*]

LETTERS 291. On this very occasion, we cannot pass over, most beloved son, and other Reverend Fathers of Ireland, called to the service of our See, concerning the particular commendation of the Catholic institution for the protection of your youth, for the preservation of the Catholic faith, for

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the upholding and safeguarding of sound doctrine. We follow you with the sentiments of our solicitude and affection, because of the cares and the counsels which you have presented, which we consider necessary and opportune for the cause and for the universal good; and also because of the sound and solid nature of these, and the fruits which we see being propagated. Concerning the sacred seminaries, let us be vigilant, that the young men, with promising minds, may be diligently instructed in the arts and virtues conducive to the priesthood; and that, generally, the eager youth may be instructed, as far as it can suitably be done, in the discipline of the Angelic Doctor. And with the highest hopes, we beseech the most merciful God to bless your studies, your counsels, and your works, to make of your clergy a strong instrument, and to be favorably disposed towards your faithful, and to grant to them such blessings that they may rejoice, as those who sow in tears. We impart to you, most beloved son, and to all the Bishops of Ireland, and also to the clergy and the faithful who believe in your faith, our Apostolic blessing, a most heartfelt blessing in the Lord. Given in Rome, at St. Peter's, on the 1st of January, in the year 1883, in the fifth year of our pontificate.

[*Latin ed. p. 292*]

292 FROM SECTION 3. CONGREGATION OF THE COUNCIL REGARDING FUNERAL RITES, July 15, 1882. SUMMARY OF FACTS. In the Diocese of V., there exist two parishes, one under the title of St. Fusca, which encompasses the villages of Bescae and Linar within its vast territory; the other, called Poglizza, includes the village of Milhonich within its bounds. Near the boundaries of these parishes, a convent of the Third Order of St. Francis has arisen, with a church of St. Mary, commonly called Capo-Glavotok, and a monastery attached. In the year 1880, as the end of the year approached, the Superior of the Monastery, through a humble letter, informed the Most Sacred Prince that, for centuries, sixteen areas or burial places had been constructed within the church of the Convent of St. Mary at Capo-Glavotok, not only for the burial of members of the Religious family, but also for the interment of the bodies of the faithful from three neighboring towns, due to reasons of religion and distance from the parish churches. When, in the year 1821, all burial within churches was prohibited by law, a public cemetery was established, adjacent to the Convent, and an agreement was made between the mayors of the three towns and the Guardians of the Convent, whereby the aforementioned people undertook the obligation of constructing sixteen tombs, four of which would be permanently assigned to the Fathers. Two of the three parish priests followed this practice, so that the bodies were directly transported by them to the aforementioned cemetery, where they were received either by the Superior of the Convent or by another religious, and then transported to the church to perform the funeral rites and other

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functions requested by the heirs. Regarding this matter, the church of the Convent received three out of the four parts of the wax [used for candles]. In the year 1859, one of the parish priests introduced the custom of performing the funeral rites in the chapel.

[*Latin ed. p. 293*]

LAWS CONCERNING FUNERALS 293, which regulate the transportation of bodies to the public cemetery. The Religious [likely referring to a specific religious order] have protested against this practice. However, the Parish Priest, assisted by the Bishop, adhering to common law, maintains that the right to bury and to receive the associated fees belongs to the parish church, except in the case where the deceased or their heirs have chosen another church. But this choice has already been established as a permanent rule for these three towns from time immemorial. Therefore, the Fathers [likely referring to the Parish Priests] requested that, with the abuse removed, the ancient practice be restored. The current Bishop, when consulted, defended the rights of the Parish Priests against the petition of the Franciscans. However, the Ordinary [the Bishop] stated that the controversy had already been resolved in favor of the Parish Priests by two decrees issued in the years 1864 and 1871 by his predecessor. Against this resolution, the Prior Convent [likely referring to a Franciscan monastery] appealed to the Sacred Congregation of the Council [Sacra Congregatio Concilii], but the Vicar General considered it best to abstain from any decision in the matter.

DEFENSE OF THE PARISH PRIESTS. It is more widely known in law that those who reside within the boundaries of a parish should be buried in the parish church, from which they received the Sacraments in life. (Cap. ex parte Be sepult. Ferraris Bibl. Can. verb. Sepul. n. 20). For Parish Priests have a well-founded claim regarding funerals. (Maschat Ius. Can. Be sep. q. 5 n. 12). Hence, the right of burial is often called the parochial right. (Barbos, de off. et potest. Paroch. p. 3 cap. 26). And this right is due to them not only because of the material presence of the deceased within the parish, but rather because of the spiritual office exercised, as both ancient and modern Doctors teach, a point on which the Sacred Congregation of the Council has issued countless resolutions. Just as it pertains to the Parish Priest to minister to the faithful in life with the Sacraments, so too it is fitting and just that he should conduct the funerals and consign the dead to the earth. (Clement. Budum de Sepult, s. Cong. in Ilcinen. Funerum et émolument. 20 Julii 1878). Nor does it impede this primitive right of the Parish Priests...

[*Latin ed. p. 294*]

294 The rights pertaining to funerals arise either because someone has a burial place for their ancestors in a foreign church, or because a living

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person has chosen to be buried there, or because the same church has acquired the right to perform funerals or burials, either by privilege, by agreement, or by some just title. However, the Franciscans of St. Mary of Capo-Glavotok cannot present any valid title to prove that they have the right to perform funerals and burials for the inhabitants of the parishes within whose boundaries those inhabitants reside. Indeed, the Franciscans cannot obtain any support for claiming a right to themselves from the agreement entered into on May 18, 1821. For in that agreement, on the one hand, the Regulars obligated themselves to cede land perpetually for the construction of a public cemetery, according to the prescription of civil law; on the other hand, the three parishes of Berzac, Linardic, and Milhonich undertook the obligation of constructing and maintaining four burial vaults for the interment of Religious. However, not a single word is found in the entire agreement concerning the emoluments of funerals or the right to perform funeral services. Therefore, it is true that the Regulars reserved no right to themselves regarding funeral services or burials in the aforementioned cemetery, so that rather, the cemetery should be considered a communal one, as the Bishop himself asserts. This is further confirmed by the fact that the customary fee that is usually required for burying the bodies of those who do not belong to the aforementioned parishes is not paid to the Religious Franciscans, but to the Municipality of the three parishes. Therefore, it is clear that in the aforementioned agreement, there is no mention whatsoever of the right to funerals or burials, and it is clear that the cemetery should be considered a communal one, and there is no room for doubt that all matters are governed by common law. Furthermore, it is so well-established and common in law that the parish priest has the right to perform the funerals of his parishioners and to bury their bodies that no sane person would seem to doubt it. For funerals are included among the parochial rights, and their emoluments...

[*Latin ed. p. 295*]

IURIS FUNERANDI 295. Beasts of burden are regularly and always to be delivered to the Parish Priest, according to the Decretal Rota. 402, n. 8, p. 5, t. 1; Decretal. 473, n. 3, p. 3, concerning the compensation for the labors expended in celebrating divine offices and administering the sacraments to the deceased, while he lived, according to Decretal. 402, n. 9, p. 5, vol. 1. It is not permissible to urge the practice, by virtue of which, before the construction of the public Franciscan cemetery, the parishes of three towns possessed the right to bury their parishioners within their own churches. This was because there were lay sodalities present there, with tombs belonging to them. However, since these lay sodalities, to which the right of burial belonged, have ceased to exist at the beginning of this century, it must be considered that the right to bury in the churches of the Religious also ceased, by the same fact. The truth of this matter is attested to not only

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by two parish priests, but by the Bishop himself. Therefore, if the reason for any disposition ceases, the disposition itself must also cease, according to the tradition established by law. As is stated in the decrees of Patti, leg. Si cum ex §. post an. •gloss, and in the decrees concerning that which is caused by fear; it is easy to deduce that, once the sodalities that enjoyed the right to be buried in the church of the Regular clergy have ceased to exist, the church itself has lost the right to funerals and emoluments from the day of their extinction. Nor does the argument derived from an observance, almost forgotten, seem to have great weight, which, before the aforementioned convention of the year 1821, appears to have been begun, and afterwards also peacefully confirmed. Indeed, it is primarily a question of prescription against the Parish Priests, who come with their own right; it is a matter to be introduced into the acts of faculty, because it was free for the inhabitants of the three towns to choose the regular, pre-parochial church for their burial. Truly, the rights of the Parish Priests, as those who come with their own right, cannot in any way be subject to prescription by any custom, in opposition to the Constitution of Pius IV. In Principis Apostolorum, Scarfi, ad Oecumenicum, in lib. 4, Animad, tit. n. 9, S. C. C. in Nullius Sublacensis, of September 18, 1823; Decree on Decimals, May 8, 1824, Pisa; Emoluments.

[*Latin ed. p. 296*]

296 CONCERNING THE RITES OF FUNERAL. Funeral, December 14, 1872. §. Nec. And it is most just that the possession which one acquires, whether from one's own person or by reason of the office of another, should be entirely independent of the acts of those who preceded. In matters of ecclesiastical law, however, a prescription of a thousand years is not admitted, unless it is shown that those involved were prohibited, and that the opposing party, for a suitable time, acquiesced in the prohibition; Rota Decis. 253 n. 8 p. 3 dec. 11 n. 9. Dec. 365 n. 5 recent. Gloss, in I. V. Communi dividundo 6 de annali praescript. Bald, in I. Cum notissimi in fine Cap. de Praescript. 30 vel 40 Annot.. Scarfant. Luc. Can. lib. 1 tit, 15 n. 23; De Luca de Benef, disc. 98 n. 13. Nevertheless, it is clear that in this case, neither the prohibition from one side, nor the acquiescence from the other, existed; indeed, the Regulars exercised parochial duties by the indulgence of the parish priest, whether out of gratitude, or out of friendship, as is evident from what the parish priest and the Bishop themselves stated. However, the parish priest contends that the custom invoked by the Regulars is entirely absent in this case, since it is clear that on several occasions, either the parish priest himself has celebrated funerals in churches dependent on the parish, or, after the funeral services, the deceased have been carried to the communal cemetery, without any objection from the Religious.

DEFENSE OF THE FRANCISCANS. The advocate for the Franciscans, in the first place, stated: although the right of burial belongs to the parish

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priest, so that it is reckoned among his principal duties, nevertheless, it is entirely and freely permissible for everyone to choose and designate a place for their burial; Bevoti in instit. canon. lib. 2 tit. 9 % 4. If this happens, then only one thing remains for the parish priest, namely, the right to receive the canonical portion, which is now called the "fourth of the funeral"; furthermore, nothing else. This, however, belongs to the parish priests so that they may not be defrauded of their subsidies, cap. 1 de sepul. in seco. test. Paroch. part. 3 cap. 25 n. 3, Bened. XIV in Constitutione « Romanus Pontifex » et s. Congregatio in Ausculana iurium et functionum 29 Aug. 1733.

[*Latin ed. p. 297*]

IURIS FUNERANDI 297 Therefore, the parish priest ought to fulfill his office from the deceased's house to the church, and accompany the body until the church, where burial has been chosen by the deceased and his heirs, and where the funeral rites are to be performed. When, however, the church door is reached, the parish priest bestows a blessing upon the deceased, and, having delivered the body into the hands of the regular superiors, he withdraws; the rest pertains to the rector of the church; Reiffenst. in lib. 3 Decret, tit. 28 n. 36: s. Rota in dec. 1192 n. 1 et 2 cor. Emerix: Card. De Luca in dise. Ï de Regul. n. 83: Bouix de Parocho par. 4 cap. 10, n. 2 prop. 2: and in par. 4 cap. 10, n. 1 prop. 6: s. Rituum Congregatio in decreto 23 martii 1619, which states: "Associated with the funeral at the church door, the parish priest, or he from the Chapter and clergy who exercises the care of souls, ought to turn to the people, and bestow upon them absolution, and withdraw, leaving the body in the church of those regular clergy to whom alone the care of performing the offices pertains." Furthermore, the defender continues, what is to be done if the parish priest is obliged to abstain to such a degree that he cannot even enter the church wearing his vestments? For the rector is considered in the place of the parish priest, and no one else can perform an office within the confines of his church, without trespassing upon a foreign jurisdiction; s. Rituum Congregatio in Vadem. diei 2 Augusti 1698; as reported by Ferraris in the article "Quarta funeralis." "Can the parish priest enter the churches of regular canons wearing his stole and cross, and perform there the office and functions?" The Sacred Congregation responded: "No, in all cases." S. C. Episcop. et Regul. in Piacentina, 16 December 1661; as reported by Ferraris in the aforementioned article, no. 29, and the Sacred Congregation in Volaterrana, 16 March 1726. Certainly, the right to perform the funeral rites cannot be separated from the right to perform the burial: indeed, it is a well-known axiom in law: "where there is a burial, there is a funeral." Text. in cap. cum liberum 6, and in cap. in nostra 10 de sepul. Porteli, in dub. Reg. verb. canonica portio no. 5; Ferraris in Bibliot, in the article "Quarta funeralis," §. 3: Barbosa de

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off. et potest. Paroch. par.

[*Latin ed. p. 298*]

298 OF FUNERALS, chapter 25, number 37: "Therefore, funerals are those things which pertain to burial, and any occasion by which funerals are brought to the church." This is so clearly stated that if the bodies of those who have chosen a burial are carried elsewhere, or if they are to be buried in the tomb of their ancestors, and even if the parish priest has performed the funeral rites, all the revenues must be returned to the rector of the church of Alet, except for the legitimate portion. Alexander III, in chapter V concerning burials: Ferraris, in the entry "sepultura" (burial), number 7 and number 210: "And if it is buried elsewhere, either by force or fraudulently, or in any other way, the body, together with all revenues, must be returned to the rector of the church in which the aforementioned tomb is located, as has been said concerning one who is not buried in the burial place he has chosen." Berengo, *Enchiridion parochorum* (Handbook of Parish Priests), page 359 and following, Venice, 1877. Given these circumstances, the defender argued that it was unnecessary to inquire whether anything had been changed in this regulation, now that the authorities of the civil government, both in Italy and in other regions, have prohibited the carrying of bodies into churches. Even if the choice of burial is taken away, it does not necessarily follow that the church's right to receive offerings for the funeral is also taken away. Indeed, even with regard to burial, the regulations of the religious order of St. Mary of Capo Clavotock have not lost anything, for they have established a public cemetery near the church and within the monastery walls, which is one body with the church; and they have established it outside, so that they may retain their full rights, and so that nothing may be taken away from them by new laws. Therefore, it is concluded that nothing has been changed by the edict: for those whom the priests previously buried in the church, they now bury in the adjacent cemetery. This has been made clear to the parish priests, so that not only have the rights of the Franciscans always been fully maintained, but they themselves have confirmed this through an agreement made in 1865 with the priests. Indeed, the priests have only sought to receive from them a suitable portion in any funeral. But the choice of location is maintained for all three towns.

[*Latin ed. p. 299*]

LAWS CONCERNING FUNERALS 299, he affirmed, can be easily proven, since the families have long chosen a place for their successors, and therefore, what happens in the Franciscan church is what is customary for family plots and for the people. This is clearly demonstrated, either by the ancient custom, or by the agreements. Regarding the custom, it is not only said to have been approved by the Fathers, but, in the absence of

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others, it provides the most certain and evident right. It is true that not just the Fathers, but all the citizens of the municipality, the elders of the people, testify that the parish priests have always been considered the Fathers. Meanwhile, it is customary for the parish priest to accompany the deceased's body to the church, to give the blessing outside the door, and, after handing it over to the Fathers, to depart; and the Fathers always perform the funeral rites. How much force an ancient and time-honored custom has, he said, is not unknown to anyone; for it provides a better title from the world and establishes a most commendable practice. This must be given even greater consideration in this case, because it is related to a contract, and it should be considered interpretative, not prescriptive. Therefore, this was the reason why no one from the parishes challenged the rights of the Franciscans over the course of two hundred years, or ever claimed the right to bury or perform funeral rites for themselves. Nor did the agreement that the Fathers entered into with the village officials in the year 1821 change anything; it not only did not diminish the rights of the Franciscans, but rather, it clearly confirmed them, because it showed the consent of the entire people, and the will of all the citizens, and all the village officials designated this place as a perpetual burial ground for themselves and their own. And it is said that this was so evident to everyone that no one dared to introduce a contrary custom; indeed, everyone faithfully carried out what had been agreed upon, as the elders affirmed for the truth. Furthermore, the contract changed nothing in the matter of the parish priests: it is the same today as it always was, and it is treated in the same way. Therefore, those parish priests who deny the rights of the Franciscans, and contradict themselves, are those who have said the law and agreed...

[*Latin ed. p. 300*]

300 Those who claim to have been harmed by the law concerning burials, or who allege a detriment resulting from this law, argue, and falsely invoke equity, because once a decision has been made, it cannot be impugned. He then refutes the objections of the parish priests, particularly that, since, through an agreement of the year 1821, a permanent burial place was designated for the citizens, the right of the villagers to choose a burial place elsewhere would be taken away, a right which ought otherwise to be free to everyone. But he declares this argument to be absurd, because the judges, or local authorities, out of necessity and by a special mandate from the citizens, established a cemetery near the Franciscan Church, as is evident from the agreement, and in such a cemetery, they designated a burial place for themselves and for others. Clearly, he says, if nothing is added about performing the funeral elsewhere, it always returns to "where the tomb, there the burial," and since the choice of the burial place is also considered to be made permanently along with the choice of the church, if,

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however, they insist on celebrating the funeral elsewhere, nothing prevents their will from being fulfilled. For all ought to be buried in the tomb of their ancestors; with the reservation, however, that each person retains the right to choose a burial place elsewhere, Ferraris, *Jura Ecclesiastica*, § 8 and following; Reiffenstiel, *Liber 3 Decretorum*, title 28, number 10; Barbosa, *De Officiis et Potestatibus Parochorum*, part 3, chapter 26, § 31: "When someone dies, he must be buried in the place where his ancestors are accustomed to be buried, unless the parish priest allows otherwise." Therefore, he concludes, the agreement about which we are now disputing does not harm anyone, and does not take away any right: it is entirely permissible for everyone to choose a burial place elsewhere, and finally, if they do not make another choice, all citizens must be buried in the church of the Franciscans. Furthermore, he presents the opposite argument, namely that the agreement that the villagers entered into with the Fathers does not grant the Franciscans the exclusive right to bury people there; and since everything must be interpreted without harming the parish priest, at least the parish priests must have the right to bury people there along with the Franciscans. However, the defender argues, this argument is utterly contrary to truth. And first, disputes would arise in the death of any citizen, so that it would be necessary to designate a permanent judge.

[*Latin ed. p. 301*]

OF FUNERAL LAW 301. Then, from the contract, it is clearly demonstrated that a cemetery was established for all the deceased, so that all may be buried in the designated place. Therefore, it concludes: either the contract must be observed, and all the deceased must be brought to the cemetery and to the regular church; or the contract has lapsed, and no right of the regular church can be admitted, whether it be a private burial ground or a communal one. He affirmed that it cannot be considered that what the Vicar of the Curia asserted: namely, that the agreement which the villagers entered into with the Fathers is null, because it was not sanctioned by ecclesiastical authority. Certainly, if such an objection had arisen sixty years ago, the Fathers could have investigated and responded to the truth of the matter. But now, what previously would have required proof, no longer requires proof: because, through the passage of time and legitimate usage, it is presumed; as stated by De Luca in disputation 15 on alienation, § 4, and in disputation 15, number 12, on Regulars. At the beginning of the century, what had previously been customary was confirmed by a convention, establishing a cemetery within the walls of the regular church. Then, by an agreement, both ancient and most recently specific, it was determined what pertains to the parish priests, and what pertains to the regulars. Therefore, it remains that what has pleased all, and which is maintained by secular usage, must be perpetually observed. With these and other things noted, the following question was to be explained: Does the right of burial and

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of funeral rites pertain to the Fathers of Saint Mary of Capo Glavotok, or rather to the parish priests of Saint Fusca and Poglizza, in this case?

RESOLUTION. After discussing the matter, the Sacred Council, on July 15, 1882, decided to respond: Negatively to the first part; affirmatively to the second.

[*Latin ed. p. 302*]

302 OF FUNERAL RITES: From which the following may be gathered: I. The right to bury one's own parishioners and the right to perform the funeral service over the bodies of the deceased are considered among the parochial rights, and these rights pertain exclusively to the Parish Priest. II. The Parish Priest has the right to assist in the burial of his parishioners who lack a burial place or who have not chosen one. III. When custom is invoked against the rights of the Parish Priest, the burden lies upon those invoking it to prove it conclusively; and since this pertains to the prescription of an alien right, such prescription is resisted by the very law itself. IV. However, the rights of the Parish Priest may sometimes be limited, when someone possesses a burial place in a different church, or because that church has acquired the right to perform funerals or burials through a privilege, a convention, or some other just title. V. It appears that the Franciscan Fathers have gained nothing against the rights of the Parish Priests, neither through a convention in which not a single word is mentioned regarding funeral emoluments, nor through the favor of the Franciscans in performing the funeral rites, nor through an unforgettable custom, which has not been conclusively proven, especially since the matter concerned acts that were optional. ARETINE JURISPRUDENCE. July 15, 1882. SUMMARY OF FACTS. In the Chapter of the Cathedral Church of St. Peter in the city of Arezzo, there exist four dignities: namely, the Presidency, the Archdeaconate, the Primicery, and the Deanery. Of these, the Presidency, which offers a distinct stipend, distinguishes itself from the others.

[*Latin ed. p. 303*]

The jurisdiction of Mass held three dignities, just as all the canons did, whose establishment preceded the year 1627. For in that year, the first of the six canons outside of Mass was established. The canons of Mass were in possession of the right to nominate new canons and all dignities, except for the prebend, upon the vacancy of any canonry of Mass, provided that the vacancy did not occur during the reserved months. They were also in possession of the right to nominate among themselves the Archdeacon and the Primicerius, also upon the occasion of a vacancy in a month not reserved to the Pontiff. When, due to unfavorable circumstances, the Archdeaconry became vacant, Pope Leo XIII, through Apostolic Letters dated February 25, 1880, appointed Charles G. to that office. On the occasion of this appointment by the Holy See, the canons of Mass requested the faculty to

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extend the vacancy of the Primicerius, and of the other three canonries, for at least five years, and also the faculty to elect and present a suitable canon in the place of Dom Donatus B, who had already reached the end of his days since the year 1863. To receive such requests, and in view of the matter at hand, it was necessary for the Sacred Congregation to decide on the legitimate patronage of the canons of Mass. Therefore, a discussion arose concerning the active and passive patronage of the canons of Mass: active, concerning the nomination to all canonries and dignities, except for the prebend; passive, concerning the Archdeaconry and the Primicerius, dignities to be conferred only upon themselves. Before the true cause was presented, both the Ordinary of Arezzo and the canons outside of Mass were questioned, to see if they had anything to present in their favor. After these matters were settled, and after the responses of each, and after the vote of the Sacred Datary was received, the cause was presented. The following arguments were raised, which were *adversa* by the Apostolic Datary:

Against the active patronage: the argument was presented that, lacking a title, the Chapter should resort to observation; for it does not...

[*Latin ed. p. 304*]

304 The patronage rights, concerning the foundations and endowments of certain benefices, cannot be attributed to the age of the Leoine Capitular, but rather to individual Canons. However, this is not evident from the documents; the nominations made by the Chapter in ancient times held a place in the apostolic canons, without being subject to any reservations. Indeed, in the Apostolic Bulls, no mention is found of this Capitular right; and the Chapter itself declared in its prayers that its right of patronage only applied in the case of the cessation of apostolic reservations. Therefore, the rights of the Apostolic See remain, without any distinction. A less valid demonstration of the passive right of patronage is found in the documents presented. But if the Chapter itself declares that it does not invoke this right of patronage in the case where a benefice is reserved to the Holy See, and that it wishes the Apostolic reservations to fully effect their purpose, then it has nothing to oppose to the claims of the Canons of the mass. If any rights seem to be violated, those rights are the proper rights of the Ordinary, and must be vindicated by him.

WHAT WAS RAISED *EX OFFICIO*. *Ex officio*, it was objected to the Canons that the right of collation was always presumed to be held in law for the freedom of benefices; and that when alleging a right of patronage, the burden lay upon them to prove it (Rota Recent, p. 4, decision 59, no. 9). The Chapter was denied the title; and it was held that it could not hold the foundation and endowment of certain canonries and dignities of the Archdeacon and Primicerius, dating back to the fifteenth century. For from what the Canons did at that time, no actual right of patronage for

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the Canons of the mass could arise. Nor did they deserve to be protected; for in matters of patronage for the establishment of observance against the free collation of Bishops, it is required that claims be proven that they have been exercised for forty years, provided that such a forty-year possession is accompanied by public voice, reputation, or other presumptions that have the force of reputation (Ferraris, *verbo* "iuspatronatus," art. 3, no. 44). Indeed, in the year 1843, the Bishop of Fiascaini had disposed of the dignity of the Archdeaconry as if it were subject to free collation.

[*Latin ed. p. 305*]

JURISDICTION 305 and this act of prescription having completely interrupted the flow favored by the Canons. WHAT THE CHAPTER ALLEGED. Before addressing the questions concerning jurisdiction more closely, the Chapter declared three things. Firstly, it protested that it did not intend to detract from the rights of the See, arising from its reservations and affections, by defending the active or passive right of patronage. Secondly, it warned that it had no true opponent, since both the Apostolic Datum and the Ordinary of Arezzo, and the canons outside the mass, had abstained from any true contestation of the right of patronage. Thirdly, under the name of the Chapter, it declared that the canons of the mass were to be understood. Therefore, the Chapter, that is, the canons of the mass, first claimed the right of patronage over all the prebends and dignities of the mass, (except the Praepositura), exclusively over others, and sought to maintain for themselves both the title and the right of presentation. For the right of patronage is acquired in three ways, namely, by foundation, by construction, and by endowment. However, it is certain that the Chapter, preferring to erect new prebends, rather than to enjoy all its fruits, had, over time, relinquished goods that had been its own from the tenth to the fourteenth century. Thus, the Chapter favored the canons of the mass in the titles of foundation and endowment, having, in fact, destined its own goods, from which it could have received revenue and made its own use, for the foundation and endowment of new prebends. It cannot be objected that such foundations and endowments were made from the goods of the Chapter; for this frequently occurs in ecclesiastical patronage. But this manner of acquiring the title of patronage is, according to Cardinal De Luca, in *De Jure Par.* Disp. 7, no. 11. Even lacking a title, ecclesiastical patronage, favored by the Chapter, is most clearly demonstrated by prescriptions and statutes of the Chapters, as testified by the same Cardinal, *loc. cit.* Furthermore, in the statutes of the Chapter, completed in the year 1263, it is written: "Also, that elections, postulations, provisions, concessions, and presentations of prelates, rectors, and canons, and of the clergy..."

[*Latin ed. p. 306*]

306 JURISDICTION: Those matters which are to be carried out and cele-

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brated in the Churches pertaining to the Canonry of Lucca, or in which the Canonry has the right to elect, nominate, or present [candidates], are to be done in the Chapter of the Canonry, with the presence and consent of the majority of the Canons. Furthermore, even to the appointed Canons, for the gravest argument of jurisdiction is held to be obedience, as Ferraris allows under the word "jurisdiction," number 44; *Rota Decis.*, number 5, part 9, volume 1, and *Decis.*, number 64, number 11, part 13, *Recent*; and from the year 1478 to the present, proofs of continuous observance have been issued by the Chapter, so that it is by no means permissible to doubt this jurisdiction. To these, one must add the constant and uniform testimony of the Ordinaries of the Luccan See: which, as the same author, Ferraris, *loc. cit.*, calls the "maximum." For the Bishops of Lucca have, since the year 1552, used the formula in the Bulls of institution of the Canons of the Mass, and of the Archdeacons and Primicieries. "The Chapter and the Canons, to whom the election and presentation of a suitable person for the Primicery and such dignity (or canonry, if the matter concerned only the simple granting of a canonry) pertain, are to be consulted." Regarding nominations made directly by the Pope, or by Bishops, by the authority delegated by the Pope, nothing is to be said: for, as has been stated many times, *Rota Decis.*, number 421, part 18, *Recent*, number 30, and *Decis.*, number 245, part 9, number 35, provisions made by the Pope do not prejudice the rights of the patrons. The same is taught by Cardinal De Luca, *De iurepatr.*, Discourse 7, number 7. This, however, descends from the very nature of ecclesiastical jurisdiction, as Piton states, *Discept. eccles.*, Discourse 3, number 7. Finally, throughout the entire time that the Penitentiary [office] has annually granted extraordinary faculties to the Bishops of Etruria, for filling nominations, even during reserved months, or in benefices in any way affected by the Holy See, the Canons of the Mass have constantly exercised the right of nomination. When a doubt arose between the Bishop of Lucca and the Canons of the Mass concerning the interpretation of this faculty, the Holy See...

[*Latin ed. p. 307*]

In the month of May 1848, the *Jurispatronatus* [307] declared that "the rights of conferring" ecclesiastical benefices of *jurispatronatus*, insofar as they are held, are to be considered restored, as if they had not been reserved." In other words, the rights are considered restored to the patrons of the church, allowing them to present candidates to the Bishop, who, in turn, is to institute them.

Regarding the passive *jurispatronatus* of the Canons, its origin is indicated in the chapter act of May 24, 1465, in the instrument celebrated on the following day, May 25, with the solemn approval of the Bishop, and in the Bull of the Supreme Pontiff Paul II. For, since the dignities of Archdeacon and Primicerius, which had existed in ancient times, had been

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suppressed due to insufficient revenues, the Chapter restored them and re-established them, assigning to the Archdeacon one-third of the revenues, more than the other canons, and to the Primicerius one-quarter, more than the other canons. Furthermore, the Chapter established that, for the conferral of these dignities, each canon must be examined and scrutinized; and this method, preserved to the present day, was used to elect the first Archdeacon and the first Primicerius. This was approved by the Bishop, and the Supreme Pontiff Paul II confirmed "whatever was contained in the instrument and in similar documents." The observance of this *jurispatronatus* is also evident, for, with the exception of nominations made by the Pope, the Chapter has always presented to the Bishop those Archdeacons and Primicerius elected within its own ranks, as evidenced by numerous and reliable documents.

From the words of Bishop Fiascaini, and from the subsequent numerous nominations made by the Chapter, which the same Bishop ratified, the terms used in the Bulls of institution clearly demonstrate the belonging of the *jurispatronatus* in favor of the Chapter.

To eliminate any objection that might be raised against this, and to refute any claim that such rights are detrimental to the Episcopal authority, the Decision of the Canons of May 5, 1700, was cited, before Caprara, stating that, since it is possible for such rights to be prescribed by a lower authority, and since they have been traditionally held...

[*Latin ed. p. 308*]

308 CONFERRAL OF BENEFICES, from the decree of Cardinal De Luca concerning benefices, cited, Dispensation 7, number 4. It is held that a prescription lasting more than seven hundred years is to be considered: for in the year 1183, the Supreme Pontiff Lucius III, in Letters addressed to the Chapter, wrote: "We confirm and decree that your ancient and reasonable customs, observed thus far by you and your successors, shall remain in force perpetually by the authority of the Apostles..." We also know that the election of the Primicerius was established by the aforementioned Jerome, formerly your Bishop. After these matters were debated, the following questions were proposed to the Sacred Congregation to be resolved: 7. Does the right of patronage extend to all prebends, endowments, and dignities of the Mass, benefiting only the canons of the Mass, exclusively excluding others in this case? 8. Does the right of patronage extend to the Archdeaconry and the Primiceriat in the same Cathedral, benefiting only the canons of the Mass, exclusively excluding others in this case?

RESOLUTION. The Sacred Congregation, in its general meetings on July 15, 1882, issued a decree: Regarding both questions, the answer is affirmative.

FROM THIS, ONE MAY GATHER THAT ecclesiastical patronage provides a most valid title for the foundation and endowment of benefices.

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Furthermore, according to the common opinion of the Doctors, it is not required that the founders establish new prebends from their own property; but it is sufficient that the benefices be established from the goods of the chapter's treasury, the fruits of which would henceforth belong to the founders.

[*Latin ed. p. 309*]

III. The rights which the founders expressly reserved for themselves in such foundations and endowments must be observed, especially when the express consent of the Ordinary and the confirmation of the Pontiff have been obtained.

IV. A strong argument for the validity of existing patronage rights is derived from their observance. And the statutes of the chapter provide the greatest demonstration of this, the more authority they possess, the more ancient their foundation.

V. Nominations made by the Pope do not prejudice the rights of the patrons, even over the centuries.

VI. There should be no aversion to the exercise of these rights, since they rather establish a servitude for the bishops; for the patronage of canons in cathedrals seems to affect the manner rather than the substance. Indeed, while the election of canons is reserved to the chapter, the confirmation of the elected is reserved to the bishop. FELTRIEN. ON RIGHTS AND PRIVILEGES. July 15, 1882. In the waning years of the 16th century, the city of Feltre, and its surrounding areas, constituted a single parish, whose habitual care was entrusted to the chapter of the cathedral church, while the actual care was administered alternately by two vicars, called sacristans, one a canon, the other a mansionary, for alternating weeks. Since these aforementioned vicars administered the sacraments indiscriminately to all the faithful, and performed other parochial duties promiscuously, the method of exercising this care for souls seemed to be fraught with many inconveniences, and to be detrimental to the spiritual well-being of the people. Noticing this, the Bishop of Faventinus, as Apostolic Visitor, prepared a summary of the facts.

[*Latin ed. p. 310*]

310 FELTRIEN. Seeking to better attend to the care of souls, on August 30, 1584, he issued a decree, by which he established that the Bishop of Feltre, "as soon as it may seem expedient to him, shall divide the said parish into two parishes, so that the faithful of the aforementioned parish may each have their own proper pastors, and that the care of them may be had... according to the disposition of the same Council (of Trent)." This mandate was executed by the Bishop Rovellius of Feltre, through his decree of June 1, 1593. For the sake of clarity, it is fitting to present the words of the decree, which pertain to our matter: "The Bishop of Feltre... considering

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that, according to the disposition of the sacred Council of Trent, Session 24, chapter 13, concerning the reform of things, it has been commanded to the Bishops that, in those cities where the parochial churches do not have certain boundaries, nor do their pastors have a proper people whom they govern... for the safer salvation of the souls entrusted to them, they ought to divide the people into certain and proper parishes, and to assign to each of them their own perpetual and particular pastor, who may know the souls entrusted to him, and from whom alone may they lawfully receive the sacraments... by the authority of said Council... he divided the people of the city of Feltre... into two parishes, to be governed by two of the said church's (Cathedral) pastors, called Sacristans, or curates... He then established the boundaries of one parish, stating: "There shall be one parish, and a special church of Feltre, called after St. Luke, and it shall belong perpetually, particularly, and fully... to the Curate of the Cathedral Church of Feltre, called after St. Luke... and the inhabitants of that parish shall have him as their own particular pastor, and from him alone may they lawfully receive ecclesiastical sacraments." Having established the boundaries of the other parish, which is to be called after St. Mark, and its pastor is to be called the Sacristan of St. Mark, he repeats the same precise words as before. And furthermore, in order to facilitate the performance of the following parochial duties, the aforementioned Bishop decreed that the aforementioned pastors shall each... "

[*Latin ed. p. 311*]

FELTRIEN. 311 "That is to say, that within the boundaries of their parishes, the proper members should personally reside; and, in common and equally, they should use the Cathedral Church as their own parish church; that each one should perpetually hold the keys to the baptismal font, to the sacred oils, and to the most holy Eucharist, as well as the four parish books, namely, the records of souls, of baptisms, of confirmations, and of those joined in marriage, belonging to their own parish... that they should provide, at their own expense, the larger and smaller hosts for the use of the celebration of the Masses and the Holy Communion of that church; that, in turn, one of them should, every other week, celebrate the Divine Office and the Masses in the choir; the other, however, should, during the Mass, deliver a sermon to the people, announce the feasts and other divine services to be celebrated publicly, and proclaim the marriages to be contracted... No one has ever doubted that there are two properly called parishes, and two true, actual parish priests, or vicars, in Feltria. But the parochial office of these aforementioned vicars has been so restricted by the passage of time, that at least in the city, it has been reduced to these three things: the administration of baptism, the blessing of marriages, and the administration of the sacraments to the dying. The vicars have never, up to now, offered sacrifice for the people; the distribution of the Most

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Holy Eucharist in the Cathedral, and in the parish church, is entrusted to a certain Sacristan by the Chapter, so that the vicars, not even at the time of Easter, know who of their parishioners attend the sacred Synaxis. The vicar of St. Luke gives a sermon once a month, in a certain suburban village; the vicar of St. Mark, twice a month, once in one, and once in the other of two other suburban villages. In the city, however, they have never performed this parochial duty, nor were they ever entitled to do so, since the Chapter of the Cathedral, as long as the parish priest habitually indicates such a right to himself, and has it fulfilled, either by himself or by another, through preaching, which takes place in the Cathedral Church at the time..."

[*Latin ed. p. 312*]

312 FELTRIEN. The seasons of Lent and Advent are observed. The parish vicars devote their efforts to teaching the fundamental principles of Christian doctrine only in the aforementioned suburban parishes; but the Chapter considers it its responsibility to do so within the city, and, by its delegation, certain individuals, whether canons or simple priests, instruct boys and girls in the catechism in various churches. However, no one takes care to ensure that the children faithfully attend this sacred instruction, and the parish vicars are not informed as to which of the children from their own parishes attend this instruction, or neglect to do so. When the Bishop discovered these matters during a pastoral visitation, and perceived that more harm was being derived from them for the people, he resolved to apply remedies that seemed most appropriate for correcting these abuses. First, he suggested to the vicars the obligation of celebrating Mass for the people on feast days. This decree was received with displeasure by the Chapter; hence, the Dean, in its name, presented a suppliant petition to the Sacred Congregation of the Council. When questioned by the Sacred Congregation, the Bishop reported that the Chapter had been convened, so that, after consulting with him, such controversies, and other matters pertaining to the exercise of parochial care, might be resolved; but when nothing was achieved, he requested that his views be presented to the Sacred Congregation. *Disputation Synoptica. DEFENSE OF THE CHAPTER.* And first, the Chapter contended, through the Bishop of Rovellium, that the decree issued by the Apostolic Visitor on June 1, 1593, which assigned to both vicars the responsibility for the administration of the sacraments within the city, did not establish two parishes. Indeed, perceiving a spiritual detriment arising from the alternative of pastoral care, the Apostolic Visitor ordered that the Bishop assign a definite number of faithful to each vicar, from whom alone the sacraments should lawfully

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be administered. But, according to this disposition...

[*Latin ed. p. 313*]

FELTRIEN. He argues that it is not permissible to claim that two parishes were established, and that he had ordered their establishment. However, he does not believe that the Bishop of Rovello can demonstrate, through the execution of the Apostolic Visitor's decree, that this was the case, based on documents drawn from the capitular acts: which state that in the Cathedral of Feltri, only one parish exists, the care of which the Chapter formerly exercised through its Dean, together with two sacristans, and then subsequently only by the sacristans, but always under the authority of the Chapter, as the Chapter asserts. Furthermore, the Bishop himself admits that the Chapter has always acted as the habitual parish priest. Moreover, when there is only one habitual parish priest, it would seem that only one parish exists. Finally, it appears beyond doubt that, over the course of three centuries, the Chapter and the Vicars have acted as if there were only one parish, and that the Bishop's decrees regarding this matter have never been used to revoke their obligations. Therefore, since it cannot be admitted that so many prelates have negligently fulfilled their duties, it is more likely that they believed that the aforementioned decree had either never been executed, or that it did not necessarily imply the establishment of two parishes; and therefore, any statements that might seem to suggest otherwise should be understood in favor of the Chapter. With this established, it would be unnecessary to investigate the second doubt. However, in the event that the E.E.VV. [Most Reverend Lords] were to adopt a different opinion, the Chapter would demonstrate that the Cathedral should remain as the only parish church. And indeed, this does not seem to contradict the provisions of the Council of Trent, which orders that a distinct population be assigned to certain parishes, and that a perpetual parish priest be assigned to each, but does not require that each parish have its own particular church. Hence, the same church can optimally serve two or more parishes, since the purpose intended by the Council of Trent is that each parish priest should be able to know his own faithful and administer the sacraments to them. Therefore, it seems that the decree of the Bishop of Rovello is correct in that part in which it states "that the Cathedral Church should be used commonly and equally" by the Vicars.

[*Latin ed. p. 314*]

314. Et ut propria parochialis ecclesia habeant, ita ut in vigore manente, ea conservetur. Quod, ut Capitulum dixit, magis retinendum est, si perpendatur non semel Feltrienses Episcopos duplicem parochialem ecclesiam constituere in animo versatos fuisse, sed, perspicientes maximas difficultates huic innovationi oppositae, satius putarunt res in statu quo erant relinquere, ne damna maiora evenirent, quae, ut videntur, aliquae

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Canonicis ipsis gravissima derivare possent. Ex quibus concludi potest, ad Cathedralis Ecclesiae decus, et ne plurima damna ipsi obveniant, nullam aliam parochialem ecclesiam eligendam esse. Ad Missam autem pro populo, quod attinet, videtur Vicarios illam perlitare non teneri, et Missae conventualis celebratione etiam huic oneri satisfieri. Et sane, Vicarios in casu missae pro populo Obligatione non obstringi, satis aperte probari videtur auctoritate Clar. Lucidi in opere de Visitatione SS. LL., vol. 1, p. 435. Cum itaque in themate et habitualis cura penes Capitulum resideat, et Vicarii numquam Missam pro populo perlitare consueverint, videretur ipsis nec in posterum hanc obligationem imponendam, Capitulum vero, cum per tria saecula bona fide putaverit Missae conventualis applicatione etiam oneri missae pro populo satisfieri posse, praescriptionis iure frui videretur. Parum in Quarten dubio immorandum esse arbitror, siquidem ostensa superius Paroeciae unius existentia, liquido sequi videtur alterutrum, non autem utrumque Vicarium, verbum Dei ad populum diebus festis annunciare debere. Nam nulla necessitas apparet ut, praeter Tridentinae Synodi praescriptionem, Vicarii cogantur in alia etiam Ecclesia sermonem ad populum habere, cum parva sit civitas, et fideles ad Cathedralem commode accedere possint. Ad consuetudines devenient, in primis generice observandum duco, ait defensor, consuetudinem, cuius memoria non extat, ius inducere qua rei iudicatae, qua transactionis, qua privilegii Principis; Gloss., in cap. "Super quibusdam."

[*Latin ed. p. 315*]

FELTRIEN. 4 315, concerning the words "Non extat memoria," which signify "It is not remembered." Decree of the Beneventana Tribunal concerning mills, March 15, 1819, before Mark, and the mother is of whatever better title of the world; Decree of the Beneventana Tribunal concerning mills, March 20, 1820, before the same. Hence, the force of custom is very great, both in civil law, as in I. 3. C. De Episc. aud. I. Munerum ff. De muner. et bonor., and in canon law: cap. 9. De consuet.; Decree of the Montis Falisci Canonry, May 5, 1823, before Tiberius. Specifically, the custom whereby Vicars sometimes, on feast days, go to the suburbs to perform the parochial office, appears to be to be maintained. For, since those dwelling in the suburbs are distant from the Cathedral Church, and are in greater need of spiritual assistance, it seems fitting that Vicars, worthy of praise, should foster their piety through the preaching of the Word of God and the performance of sacred functions. Nor does the custom appear to be to be abolished, whereby Vicars are excused from the burden of preaching on those days when the Canon Theologus gives readings from Holy Scripture, and the annual preacher gives sermons. For such a custom, far from being contrary, rather seems to be in accordance with the disposition of the Council of Trent, in session 24, chapter 4, concerning Reform. There it is stated: "The duty of preaching, which is the principal duty of Bishops...

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the Holy Synod commands that in their own churches they themselves, or if lawfully hindered, those whom they appoint, perform it; and in other churches, through the Parishes." Therefore, since the Bishop in the Feltri Cathedral, as in his own church, is primarily bound to perform the duty of preaching, and this is carried out by the Canon Theologus and other preachers, it seems fitting that the Vicars should omit the sermon to the people on those days, so that the faithful may hear other preachers of the Word of God, fulfilling the Bishop's office, and that more learned Vicars may often come. Regarding the seventh doubt; since from the foregoing it is sufficiently clear that one of the Vicars ought to perform the duty of preaching, it follows spontaneously that he is excused from the burden...

[*Latin ed. p. 316*]

316 FELTRIEN. The singing of the conventual Mass should not, in the least, be the responsibility of the Vicars. For the Capitular Statute, approved by many Bishops, has remained constantly in force; therefore, a very serious reason would be required for it to undergo any change. But such a reason seems to be lacking in this case. Furthermore, it must not be overlooked that, if things were otherwise, a new burden would be imposed upon the Mansionaries, without any compensation, which would certainly be contrary to the rules of equity. It also seems proper to maintain the custom whereby the right and direction of Christian doctrine, to be imparted to the children of the city, is reserved to the Chapter, while the care of the children of the suburbs is entrusted to the Vicars. For such a duty does not seem to be so exclusively the prerogative of the Parish Priest, that it cannot also properly belong to others, independently of the Parish Priest himself. Indeed, such a custom prevails in many places, and it received confirmation from the Holy Congregation of the Council in Ferrara on August 11, 1742. If, however, the Most Reverend Lords should judge that this custom should be abolished, it would not necessarily follow that the Bishop could compel priests, not dedicated to the care of souls, to teach the children the rudiments of the faith. For no obligation can be imposed unless it is founded on the sacred canons. Moreover, both the Council of Trent and the Constitutions of the Popes demanded this duty of the Parish Priests. It also seems highly improper to abolish the custom whereby the Chapter designates a priest for the administration of the Most Holy Eucharist. For nowhere are Parish Priests commanded to administer this sacrament themselves, and they could not, even if they wished, with so many other duties weighing upon them. Furthermore, it is clear that such a custom does not infringe upon parochial rights, as is evident from the fact that in this venerable city, it prevails in certain patriarchal and simultaneously parochial churches. It is wrongly objected that it follows from this that the Vicars would not know who, especially at the Paschal season, attend the sacred Synaxis, when they could otherwise know. Finally, it seems a legitimate custom that the Vicars

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are obliged to submit their marriage banns to the inspection of the Chapter. For it is very fitting that the Chapter, as a habitual...

[*Latin ed. p. 317*]

ARTICLE 317. The parish priest, and in the cathedral church, after the Bishop, possesses all manner of authority, and the acts of obedience are to be rendered to him. It would seem that there can be no doubt that the Bishop can determine that the sacred functions be performed by the parish priests, in order to foster the piety of the faithful, provided that due honor is given to the cathedral church, and that obligations, besides the parochial duties, are not imposed upon the vicars without compensation.

DEFENSE OF THE BISHOP. Another, but a true, argument is that the Bishop, according to the aforementioned decree, divided the city and its suburbs into two parishes. And indeed, the Apostolic Visitor ordered that the Bishop "...should divide the people themselves into two parishes..." according to the disposition of the same Council (of Trent). Truly, at that time, both from the manner of speaking, and from the mandate given to the Bishop, to carry out such a division according to the Tridentine dispositions, it seems sufficiently clear that the intention of the Apostolic Visitor was to distinguish the people into two properly called parishes. But all doubt seems to vanish on this point if the decree of the Bishop is considered. For there, the Bishop, after the Tridentine words of Session 24, chapter 13, concerning reform, in which it is established that where parochial churches do not have certain boundaries, nor do their pastors have a proper people whom they govern, the people should be divided into certain and proper parishes, and a permanent and particular parish priest should be assigned to each, proceeds, "...desiring, according to the aforementioned Council and the decrees of the Visitation, to direct the care of souls of said city in a suitable manner..." by the authority of said Council, "...divided the same city into two parishes through two of the pastors of said church." Then, to each vicar assigned a part of the city, with full right to govern, it is added, "...he established that each should have within the boundaries of his own parish... the keys of the baptismal font, the sacred oils, and the most holy Eucharist, and should keep the four parochial books." From these things, it clearly appears that he intended to establish two parishes.

[*Latin ed. p. 318*]

318 FELTRIEN. Hoc idem perspicue demonstratur ex institutione Vicariorum. Cum enim Capitulum, non solum ius electionis sibi reservaverit, sed etiam Vicarios instituit "...per concursum," ut dixit Episcopus, "et per canonicam investituram ad liberam Episcopi collationem; eorum beneficia in ipsis institutionis titulis beneficia parochialis vocantur: et si quando alius ab una ad alteram Parochi transfertur, id semper per novum concursum, et novam canonicam institutionem actum est." Hoc demum confirmatur,

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ut refert Episcopus, ex constanti consensu omnium, nemini excepto, etiamsi non Capitulo, quod in relatione Episcopo, Dioecesim perlustranti exhibita, asseruit duas esse in illa civitate paroecias. Extra controversiam posito duas Feltriae Parochias existere, Episcopus sustinet, primum, ex rerum adiunctis, utrique propriam Ecclesiam designandam esse. Nam Episcopus, citans Concilium Tridentinum, sessio 24, cap. 13, de Reformatione, non solum Paroeciarum divisionem, sed etiam cuique Parochiae peculiarem Ecclesiam designandam praecipere. Hinc decretum Visitatoris apostolici ita intelligendum est, ut ad fines dispositionis Concilii, ad eligendam propriam Ecclesiam pro unaquaque Parochia. Quod si Episcopus Rovellius, hac in parte decretum perficere non potuit, ex eo repetendum videtur, quia tunc temporis, omnes fere Ecclesiae a Regularibus regerentur. Si autem idem perficere non valuerunt, hoc ipso saeculo, tres Feltrienses Episcopi, quamvis maxime expedire perspexerint, enixe adlaborandum, ut dixit, ut huic necessitati occurreretur. Circa laesionem iurium et consuetudinum Capituli, notavit Ordinarius: multa adesse in capitularibus statutis quae, haud amplius observantur ob temporum variationem, aliis autem derogatum fuisse a Capitulo, assentiendo Episcopo: et iam data fuisse operam, ut statuta ipsa reformarentur. Quomodo ergo Capitulum obiiciet iura antiqua et consuetudines, tantum quoad Parochos et curam animarum? Consuetudines istae servari non possunt, eoque quod impediunt observantiam sacrorum canonum, et bonum animarum.

[*Latin ed. p. 319*]

FELTRIEN 319 Regarding the damages, first, he refuted the argument that the union of parishes would diminish the attendance of the faithful at sacred functions, stating that their piety would certainly be fostered more if each Vicar had his own church in which he could freely and diligently perform the sacred functions. Regarding the second point, he observed that even if the parishes were separated from the Cathedral Church, it was possible to arrange matters so that the Vicars would not lose their rights in any way. However, the Bishop said that most of the damages stemmed from this union with the Cathedral: for the parish priests lacked a church where they could exercise their zeal, they were almost unknown by their parishioners, and they could do nothing to keep the people on the right path and lead them to spiritual good. Regarding the third and fourth points, the Ordinary considered it necessary to note that, since those who have the care of souls are obligated to offer Mass for the people on festive days, it does not seem entirely appropriate to apply a conventual Mass to this obligation, and whether it is possible to fulfill this obligation in this case, or whether both Vicars are in any way hindered by this obligation. First, it is quite certain from the fact that the celebration of a single Mass cannot fulfill a double obligation. Secondly, this is also evident from the Council of Trent, Session 23, chapter 1, on reform, where it is decreed

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that all those to whom the care of souls has been entrusted must offer the Sacrifice for their parishioners. Therefore, the individual Vicars, since they claim to exercise the care of souls fully, seem to be unable to be excused from this obligation. And this is all the more so because, adhering to the Tridentine decrees, Pope Benedict XIV, in his Constitution *Cum Semper Oblatas* of August 19, 1744, established that if the care of souls resides within a Chapter, but in fact resides with a Vicar, whether permanent or temporary, the Mass for the people must be offered by the actual rector, and not by the habitual rector. These statements are consistent with many decisions of the Sacred Congregation of the Council. However, the contrary custom, which is completely rejected by the same sacred canons and pontifical constitutions under the title of abuses and corruptions, does not allow the Vicars to assist.

[*Latin ed. p. 320*]

320 FBLTRIBN.; it is possible that, with regard to this matter, the obligation to celebrate Mass for the people binds both Vicars, and this seems to be established beyond any doubt. Furthermore, it clearly follows that both Vicars should be joined to the preaching ministry on each festive day, as is evident from the Tridentine Council, Session 5, chapter concerning Reforms, where it is prescribed that, in whatever parishes, certain tasks are imposed so that the people assigned to them may be nourished with salutary words on festive days. Moreover, the Roman Pontiffs have repeatedly insisted on the observance of this arrangement in their Constitutions. Since neither Vicar can escape this duty in any way, it is clear that the Bishop must not exceed the limits of his authority by designating another church in which they must preach the word of God. As for customs, I generally consider that they should not be observed if they are contrary to the decrees of the Council of Trent; and this is because of the invalidating decree contained in the Constitution of Pius IV, *In Principis Apostolorum*, which encompasses all the decrees of the Council, as Benedict XIV wisely notes in *Institutiones Eccl.*, 60, number 7. Specifically, with regard to the custom whereby the Vicars sometimes visit the *suburbium* on festive days, ostensibly to benefit the spiritual well-being of those faithful, this seems to be an abuse. On these days, many gather in the parish church to be refreshed by the sacraments and to converse with the Vicars; therefore, it is necessary that they engage in pastoral ministry there, and not devote themselves to some *suburbium* where only a small portion of the people are present. The task of preaching the word of God is imposed upon the parish priests in such a way that it should never be neglected at any time of the year, not even due to an ancient custom. Therefore, it is reprehensible that the Vicars should excuse themselves from this duty, while the theologian reads the lessons of the sacred Scriptures, and the canon reads the homily. This custom is a corruption, and therefore should be rejected. Chapter last.

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Concerning Councils, Fagnan, to chapter. With the occurrence of *de foro comp.* number 11: indeed, it is not only disapproved of by the Tridentine Council, Session 5, chapter Z concerning Reforms, with those very words.

[*Latin ed. p. 321*]

Furthermore, § 32: "Nor can custom... impede the execution of this decree," but also Innocent XIII, who, in the Apostolic Constitution of May 13, 1723, rebuked the pastors who neglected to instruct their congregations with salutary words on feast days, striving to remove such fault from themselves under the pretext of an unforgettable, but indeed wicked, custom, "and because it did not seem necessary for them to do this, because there was an abundance of those who gave sacred discourses." It is clearly evident from what has been stated above that both the Vicar and the pastor are obliged to instruct the people entrusted to them with salutary words on feast days. However, the obligation imposed on the Vicars by the Statute to sing the conventual Mass on feast days can frequently hinder the execution of this duty; therefore, it seems more conducive to the spiritual good of the faithful if the Vicars are relieved of this obligation. Indeed, if, according to the diocesan synod, they are excused from attending the choir while performing their pastoral duties, then all the more reason is seen to exempt them from the burden of singing the conventual Mass on feast days, since on those days, in a special way, they must be engaged in promoting the salvation of souls. It also seems necessary to abolish the custom by which the Chapter claims the right to instruct the children of the city in the rudiments of the faith, independently of the Vicars. For, as is apparent, this is contrary to the prescription of the Council of Trent, Session 24, Chapter 7, which prescribes that this duty be entrusted to the pastors, ordering that on Sundays and other feast days, children in each parish be taught the rudiments of the faith. Therefore, although it is commendable that the Chapter assists the Vicars in the education of children, it is nevertheless clear, as the Bishop says, that this right and care should not be held by the Chapter as its own. Hence, it seems necessary to decide that the Chapter should offer its services under the direction of the pastors. Now, since it has been sufficiently demonstrated by experience that the pastors are quite inadequate for this work, it does not seem doubtful that the Bishop may require that clerics, who have received the tonsure,

[*Latin ed. p. 322*]

322. Furthermore, those who aspire to enter the higher orders, or priests who seek promotion to ecclesiastical benefices, should assist the parish priests in teaching Christian doctrine to children; Pope Benedict XIV, in his Constitution *Etsi Minime*, §§ 6 and 14, states that clerics, being devoted to the Church and bound to the service of God, are obligated to obey the mandates of the Bishop in those works that pertain to the divine worship

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and the spiritual advancement of the people, for clerics and priests are instituted by God for the salvation of the people. Indeed, the Bishop can demand their assistance, even imposing severe penalties, as stated in the aforementioned Constitution, § 14. This is in accordance with the statutes established by Saint Charles Borromeo in the eleventh diocesan synod of Milan, part 2, volume 1, page 320; there, a monetary penalty is imposed on priests who do not assist the parish priests in the task of teaching Christian doctrine: "Whoever, being a priest or holding a benefice, does not assist the parish priest, shall be fined two real coins." Furthermore, it seems unacceptable to tolerate the custom whereby the Sacrament of the Most Holy Eucharist is administered by a priest, independently of the vicars, throughout the entire year. Such a practice appears not only contrary to the decree of Bishop Rovello, which requires that both vicars must hold the key to the tabernacle, but also to the opinions of Doctors, who teach that this right belongs exclusively and privately to the parish priest, notwithstanding any contrary statute or custom, as Cardinal Peter stated in the Constitution of Urban IV; and thus, the Holy Congregation resolved in Ascolana on June 25, 1689. Therefore, it is the duty of the parish priest to be held responsible for any violation concerning the Eucharist, the pyx, and the ostensorium, as Giraldi explained in a decree of Pope Innocent III at the general Lateran Council. Since the vicars cannot fulfill this duty by themselves, it seems advisable to consult in such cases, so that they may choose a priest who will perform their duties. Finally, the custom whereby the vicars submit their matrimonial announcements to the inspection of the Chapter should be abolished.

[*Latin ed. p. 323*]

Feltre, June 3rd, 1823. For it appears to be contrary, both to the most ample power of the Vicars, and to the aforementioned Decree, in which it is established that the Vicars should use the Cathedral as if it were their own parochial church; and therefore, this act of subjection would seem undeservedly demanded by the Chapter. Having considered these points from both sides, the following doubts have been judged to be to be resolved:

I. Whether the city of Feltre, divided into two distinct parishes by the Decree of the year 1593, is so in this case. And to the extent that it is affirmative,

II. Whether the aforementioned Decree, which establishes the Cathedral as the sole parochial church, is to be maintained; or rather, whether it can be maintained that in this case, a proper church should be assigned to each parish.

III. Whether a conventual Mass, applied alternately by the parish priests, also suffices to fulfill the obligation of a Mass for the people in this case. And to the extent that it is negative,

IV. Whether either, or both, of the parish priests must apply a Mass for

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the people in this case.

V. Whether it is sufficient, according to the aforementioned Decree, that either of the parish priests should give the sacred discourse on feast days in the Cathedral; or rather, whether one should perform this duty in the Cathedral, and the other in a church designated by the Bishop, in this case.

VI. Whether the custom, by which one parish priest performs his parochial duties twice a month, and the other once, in the suburbs, can be maintained in this case.

VII. Whether, whenever the readings from Holy Scripture, or sacred discourses, are held in the Cathedral, the parish priests are excused from the duty of preaching, according to custom, in this case.

VIII. Whether the Bishop can compel the Chapter to amend its own Statute, if the obligation imposed by the aforementioned Statute, of alternately singing the conventual Mass, would hinder the parish priests in the performance of their duty of preaching, in this case.

[*Latin ed. p. 324*]

32. FELTRES, IX. Concerning the custom whereby the Chapter claims the right, and the direction, for transmitting Christian Doctrine to the children of the city, in this case: And whether negatively.

X. Can the Bishop compel priests, who are not at all devoted to the care of souls, to teach Christian Doctrine in this case?

XI. Can the custom of administering the Holy Eucharist in the Cathedral, even during the Paschal season, by a priest delegated by the Chapter, be maintained in this case? And whether negatively.

XII. How should provision be made in this case?

XIII. Can the custom of submitting marriage banns to the inspection of the Chapter, before they are publicly announced, be maintained in this case?

XIV. Can the Bishop, considering the decorum of the Cathedral, decree that the sacred functions be performed in other churches by the parish priests, in order to foster the piety of the faithful?

RESOLUTION. The Sacred Congregation of the Council, after ample discussion, on July 15, 1882, decided to respond as follows:

To I, affirmative.

To II, affirmative to the first part, but it is more expedient that, as soon as possible, a proper church be assigned to each parish.

To III, negative.

To IV, negative to the first part, affirmative to the second.

To V, negative to the first part, affirmative to the second.

To VI, negative; but considering the particular circumstances, the Bishop, according to his prudent judgment, may, for the present, moderate, and as

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soon as possible, abolish the custom.

To VII, negative; but if the circumstances, about which we spoke above, persist, the Bishop may, according to his judgment, exempt the parish priests.

[*Latin ed. p. 325*]

QUESTION 325. Regarding the eighth proposition, affirmative. Regarding the ninth, negative. Regarding the tenth, generally speaking, negative; and the Bishop should adhere to the Constitution of Benedict XIV. (Although this is hardly the case). Regarding the eleventh, negative. Regarding the twelfth, firmly upholding the right of the parish priests, with the qualification that concerning the Paschal time, full discretion should be left to the Chapters, so that, when the faithful request it, they may administer the sacraments. Regarding the thirteenth, negative. Regarding the fourteenth, affirmative. FROM WHICH WE GATHER: I. That it is determined by the Council of Trent, Session 24, chapter 13, that the people should be divided into certain and proper parishes; and that to each should be assigned a proper and particular church, and a perpetual parish priest, who should be able to know his flock, and from whom alone the flock should receive the sacraments. II. That it cannot be doubted that there are two parishes, already distinct by the Ordinary, after the decree of the Apostolic Visitor has been executed; which is demonstrated by the institution of two vicars, who, afterwards, in every age, were freely elected by the Bishop, through concurrence and through canonical investiture, independently of the Cathedral Chapter. III. Although the habitual care of a certain people may remain with the Chapter, whether it be a Cathedral Chapter or a Collegiate Chapter, nevertheless the exercise of the actual care must be independent of those Chapters, according to what has been repeatedly decided by the Sacred Congregation of the Council (1). IV. Although the habitual care remains with the Chapter, nevertheless, he who is carrying out the actual care of souls must offer the sacrifice for the people, according to the Council of Trent, Session 23, chapter 1, concerning the offering of sacrifices, and according to the Constitutions of Benedict XIV, *Cum semper oblatas*, and other pontifical constitutions; nor is this accomplished by the celebration of conventual Masses.

[*Latin ed. p. 326*]

326. Regarding the duties: The parish priest fulfills his duties; because there are two distinct duties. V. Customs of this kind, contrary to these duties, must always be considered as an abuse and entirely rejected. VI. It is not permissible to hesitate for even a short time; pastors of souls must nourish the sheep entrusted to them with the word of God, on feast days, as stated in the Tridentine Council, Session 5, chapter 2, concerning instruction; and the Most Holy Fathers, Popes, have repeatedly insisted on the

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observance of this provision through Constitutions, notwithstanding any contrary custom, even if it be ancient. VII. Likewise, the duty of instructing children in the fundamentals of the faith, on Sundays and other feast days, is assigned to the parish priests in each parish, as stated in the Tridentine Council, Session 24, chapter 7; however, it is not to be considered an absolute requirement, but rather it is highly commendable that others also contribute to this work, under the direction of the parish priests. VIII. Generally speaking, Bishops cannot compel priests who are not at all devoted to the care of souls to teach Christian doctrine; however, they can, according to the Constitution, even if they do not deny clerics advancement to higher orders, and they can deprive priests of benefices if they have neglected to contribute their efforts in transmitting Christian doctrine. (1) IX. The right to administer the sacraments of Matrimony and the Eucharist belongs, exclusively, to the parish priests who are actually in charge; therefore, no one can claim this right for themselves, even if they are a canon of the chapter to which the habitual care belongs. (1) See Recole, Vol. XIII, page 508; in which a question regarding the transmission of Christian doctrine was reported. The Sacred Congregation of the Holy Office, considering the particular circumstances, responded with these words, and did not admit the power of Bishops to compel all priests indiscriminately to teach Christian doctrine; and this resolution, which is in harmony with the response, seems to us to be the correct one in the present case. Doubt X.

[*Latin ed. p. 327*]

327. The CONGREGATION OF REGULAR CANONS OF TERRA SOMNENI, PRIVERNEN, AND SETIN. July 7, 1882. Since three parishes, into which Terra Somneni was divided, suffered greatly from poverty, a dispensation was requested from the Apostolic See, with the intention that the parishes of St. Angel and St. Peter, through a union, should be reduced to one. On May 29, 1868, the Supreme Pontiff granted his approval to this union through a special decree. Each of the two parishes was obligated, before the union, to pay to the Bishop annually a certain measure of wheat, commonly called a "nibbio." The Archpriest, who presides over the united parishes, whose population numbers 1400 faithful, decided, after the union, to reduce the measure of wheat to one "nibbio," while the Bishop insisted that two should be paid. SUMMARY OF THE CASE. SYNOPTIC DISCUSSION. DEFENSE OF THE ARCHPRIEST. After the history of the union, the entire parish was of the opinion that it should no longer be held to the payment of a double measure of wheat; just as it is not obligated to apply a Mass for the people in a double manner. For, indeed, dispositions have their own force, given the circumstances, and remain in effect as long as the circumstances remain the same; but when the circumstances no longer remain the same, the obligation ceases; namely, since there are no longer two parishes, but one, the obligation to pay a double amount

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should cease.

[*Latin ed. p. 328*]

328 TERRACINEN. ETC. The parish priest; as if he were released from the obligation of offering two Masses for the people. Although the parish priest received double the customary amount from his predecessor, the former pastor, for the years 1868, 69, 70, and 71; he was compelled by the same person to do so, but he issued a protest. He stated that it was not his intention, given the injustice of the times, to resort to measures to collect debts from parishioners who owed him the tithe; nor would it be proper to do so without a diminution of Christian charity, for the parish priest assumes the role of a spiritual father towards the flock entrusted to him. Although the parish priest did not refuse to use the aid of civil law to assist the poor parishioners who seek their daily bread through manual labor, he would never be able to fully collect the tithe due to him; and furthermore, fifteen livres are required by the tax authorities for each family brought before the court. He added: "If it is just that the parish priest of St. John's, whose parish consists of 1600 faithful and is more prosperous, pays one measure of wheat, it seems just that the speaker, too, should be obligated to pay one measure, due to the poverty of his people and the smaller number of souls." However, it was noted that the parish priest is, in fact, obligated to pay the tithe to the Bishop; but when one of the two parishes is lacking, one measure of wheat is due; for when the foundation crumbles, the arrangement is corrected, and "wrongs should be restricted and favors expanded," according to rule 15 of the law in book 6. It cannot be said that the rights of the episcopal curia were violated; for since the union of the two parishes was requested and obtained, it appears that notice was given of the annual payment that was due from the other parish priest of a distinct territory. For when the Bishop, as the parish priest of the parish priests, delegates a portion of his spiritual care to the priests, he reserves a portion of the tithes by a special right, as stated by Berardi in *De Paroch. origine et institutione*, book 1, chapter 6. "Bishops, when" they became the constitution of the parishes, did not therefore "abandon the administration of the sacraments within the parishes themselves"; rather, they wished to call the parish priests to their aid. Certain rights were, however, held by them.

[*Latin ed. p. 329*]

TERRACINE-N. ETC. 32í> > they should relinquish, so that the parish priests might be better supported, such as rights concerning oblations, or tithes. » Therefore, if the delegation of the parish priest ceases due to the extinction of the care, it seems that the reservation of the measure of wheat, assigned to the parish priest, should also cease, by reason of his personal and territorial jurisdiction. DEFENSE OF THE BISHOP. The Bishop said:

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nor had the Archpriest expressed any doubt concerning the right to receive the measure of wheat from both parishes, before the union of the parishes, for the benefit of the episcopal table. However, the Prelate continues, the parish priest opposes two exceptions to this double payment: first, that after the union, there is only one benefice, and therefore only one tithe is to be paid; second, that because of recent laws, the people find it more difficult to pay their debts. However, the Bishop considered that these exceptions lacked foundation, both in fact and in law. Regarding the first, he observed: neither in the aforementioned document, intended to obtain the union, nor in the Pontifical rescript, nor in the subsequent executive decree, is there any limitation to be found, whereby the double payment would be reduced to one. From these, the Bishop concludes, such obligations were left under the disposition of common law, and therefore it must be maintained that the union is considered to be made without prejudice to those who have rights over the united benefice; Glossa, in cap. quia Monasterium 2 de Religiosis domibus - there « Note that by this union, the Pope intends to preserve the rights of each; » Gonzalez comment, in dict. cap. n. 2. This is appropriately adapted to this controversy, cf. Rotae Decis. 1610 cor. Coccino n. 1. « The resolution of the doubt concerning the confirmation in > the sentence of the Rota depends on this; whether, namely, the Abbot and Convent of the Monastery of De la Vid are bound to pay the » tithes to the Chapter of Burgos, which they call necessary expenses » for two testimonies, namely of Mata Indios and Villa » Diego, from the year 1539 until the union of the Abbey and Convent, » or of that Hospital; and the Lords answered affirmatively. » The Chapter has a memorable canon in its favor, promulgated by Pope Martin V. However, this does not...

[*Latin ed. p. 330*]

330. CONCERNING THE TENTH. ETC. "The testimonies concerning the matter have been united by Paul III, and therefore the letters of Martin V do not seem to have any place" in relation to Decree Seraphini 1410. However, in our case, both the memorable letters of Martin V grant that the tenth can be collected each year; therefore, it is owed even if a benefice has been united, since the union is considered to have been made without prejudice to those who have rights over the united benefice... From this it follows that the parish priest is obligated to render the tenth to the Bishop for two parishes, notwithstanding the union that has been completed. The Bishop states that the other exception, namely that the people stubbornly refuse to pay the tenth, is not consonant with truth; and, given the opportunity, the parish priest brings sixteen families of his parish before the court. Furthermore, the difficulty in paying, on the part of the debtors, does not take away the power of bringing the recalcitrant to court. Nor is it true that fifteen livres are demanded from the treasury for each family that refuses to pay the tenth; and since the tenth of any family is far less than the price

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of thirty livres, the matter is referred to the judge conciliator, who renders a judgment economically. Nor can the parish priest, abandoning the path of justice, dispense with the obligation to the Bishop out of pity, when it is known that the parish priest himself often receives almost the entire tenth owed to him by the families of the people. Furthermore, that same parish priest cannot be called poor, because, besides the uncertain income that reaches fifty, and besides the tenths, which can amount to nine measures of rubles, he has from the parish benefice 208 scudi. With these things noted, both in fact and in law, the purpose has been to clarify the doubt as to whether and how, and in what measures (commonly rubles), the parish priest of two united parishes, St. Peter and St. Angel, must render the tenth to the Reverend Father Bishop in this case.

[*Latin ed. p. 331*]

RESOLUTION. After careful deliberation, the Sacred Congregation of Bishops and Regulars, on July 7, 1882, decided to respond: It is permissible to proceed with the solution in two measures* commonly called "rubrics." FROM WHICH IT IS UNDERSTOOD: I. From canonical jurisprudence, it is customary for the union of benefices to be carried out without prejudice to the rights of those who have rights over the united benefice; so that the rights of each are preserved, whenever they are compatible with the union. II. No limitation was found to have been placed on the matter, such that two measures would be reduced to one; neither in the petition for the union, nor in the rescript of the Holy Father, nor in the executive decree. Circular letters from the Most Eminent Prefect to the Apostolic Vicars, etc., are sent to them, in which they are instructed to inquire into matters within their jurisdiction, which may contribute to both sacred and profane knowledge. My Lords, although this Sacred Congregation, from its very beginnings, has diligently striven to achieve its purpose, namely, the propagation of the Christian Name throughout the entire world, it has not neglected to endeavor that the heralds of the Gospel, dispersed throughout the various lands of the nations, where opportunity presented itself, might examine or acquire monuments and other things that, besides contributing to the progress of religion itself, would also be entirely useful for the advancement of the sciences and the arts, and thus for the good of civil society. And evidence of this diligent intention exists in numerous projects. Indeed, it has not infrequently sent learned men, especially to the regions of the East, to collect ancient codices, in order to acquire knowledge of the history of the peoples.

[*Latin ed. p. 332*]

332 LETTERS. He employed them to refute errors and to revise liturgical books. This was largely accomplished during the legation of Gabriel Eva, a Maronite monk from Lebanon, to Egypt, to the Coptic Patriarch, in the

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preceding century, under the auspices of Pope Clement. Later, in the 11th century, Joseph Assemanus, a most learned man, who was subsequently sent to explore those same regions, enriched the Vatican Library with a treasure of valuable codices, and he published a very learned volume of the Oriental Library of the same Sacred Congregation; a truly illustrious monument of Oriental literature, most suitable for study. Furthermore, the printing press of the Sacred Congregation, whether in Latin, Greek, Arabic, Chaldean, Armenian, or Illyrian, which had been established from 1626 to produce works dedicated to these languages, and which had been recently expanded to include other languages, flourished for two and a half centuries, with such a selection and number of editions that, not long ago, even heretics themselves affirmed that it easily surpassed all other printing establishments in Europe. In addition to this, the Sacred Congregation has always readily provided, as requested by missionaries, geographical and topographical charts useful for understanding obscure barbarian regions, as well as all kinds of documents to learn about their customs, traditions, and especially their religion, and, above all, for interpreting the languages and laws of the Indians and the Chinese. The most important monument of this endeavor was established at the College of Urban in the early part of this century: a museum, collected by Cardinal Stephen Borgia, formerly Secretary of the same Sacred Congregation, a man of the most erudite knowledge in all fields, and bequeathed to the Sacred Congregation; which, in subsequent times, was increased by its own efforts and enriched with numerous ancient codices and various barbarian relics. It is certainly regrettable that, in this recent age of such religious and social upheaval, the Sacred Council, preoccupied with very serious matters and hampered by difficulties, has thus far been unable, as it had intended, to constantly emulate the efforts of its predecessors and to expand the aforementioned museum with new additions. Nevertheless, since we see, through divine grace, that Catholic missions are flourishing far and wide throughout the entire world, and that their endeavors are greatly favored by the ease of travel by land and sea, and by the frequent exchange of commerce between different peoples, there is no reason to believe that this office has failed to contribute, as much as it can, to the progress of both faith and knowledge.

[*Latin ed. p. 333*]

LETTERS. To be diligently attended to. 333. Indeed, while the civil governments of various regions of Europe exert the utmost diligence in investigating matters pertaining to them, it is most fitting that this Holy Council, which is ordered to instruct the nations in faith and in humanity, with a vast array of resources, should diligently strive to assist missionaries in every corner of the earth. Therefore, the same Holy Congregation, as to Your Eminence, so also to all Vicars Apostolic, Prefects of Missions, and other superiors of places within its jurisdiction, has written to me. It desires that, if

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anyone should discover, with greater accuracy than has yet been described, the geography of any region, the history of its people, its arts, its customs, and above all, its religion, and should also discover things that indicate the infancy or progress of a people in society, that they should investigate these matters and, if they deem it useful for understanding the natural history of the region, including botany, mineralogy, and zoology, they should send these findings to the Holy Congregation. These things, as they are more accurately determined, will be preserved in the aforementioned Museum, which the Holy Congregation, under Urbanum, has recently decreed to transfer to the Borgianum College. It has come to my attention that Your Eminence, for the sake of obedience to this Holy Council and out of affection for it, will devote all effort to the completion of this undertaking. However, let it be known that when the matter of acquiring objects of great value is discussed, it should be written to me; and in our case, a decision will be made regarding what is to be done in each individual instance. From the Offices of the Congregation for the Propagation of the Faith, on the 20th of October, 1882. IOANNES Cardinal SIMEONI, Prefect, Archbishop of Tyre, and Secretary.

[*Latin ed. p. 334*]

33. From the Indulgences Rescript of the Most Holy Congregation: An Indulgence of three hundred days is granted to boys who labor with letters, if they recite the following prayer.

Most Reverend Father Franciscus Cassida, S.J., Rector of the College of Beaumont (Windsor) in England, prostrated at the feet of the Holy Father, humbly requests that the following prayer, to be recited by all boys and young men who labor with letters, be approved and granted an Indulgence.

Deus, Consecratio studiorum in honorem Immaculatae Beatae Mariae Virginis.

Under your patronage, most beloved Mother, and invoking the mystery of your Immaculate Conception, I wish to pursue my studies and labors with letters; and I declare that I undertake this work above all for the purpose of better serving the divine honor and your cult. May you, with your benevolent favor, bless my labors. And, as is just, I, your most loving Mother, Seat of Wisdom, freely promise that whatever good may result from this for me, I will attribute it entirely to your intercession with God. Amen.

His Holiness, Pope Leo XIII, in an audience held on November 1, 1882, through the undersigned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, has graciously granted an Indulgence of three hundred days, to be gained once a day, to all boys and young men who labor with letters, provided they recite the aforementioned prayer with at least a contrite and devout heart. This present grant is valid forever, without any further dispensation. Notwithstanding any contrary decrees.

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Given at Rome, from the Secretariat of the aforementioned Sacred Congregation, on November 18, 1882.

A. L. CARD. OXEGLIA

A S. Stefano

Praefectus.

Fr. Delia Volp°, Secretarius.

[*Latin ed. p. 335*]

The following is a summary of the case, which appeared in our journal in the volume entitled "Emptionis et venditionis acta," before the Sacred Congregation on December 1, 1866, and February 16, 1867, between a certain Pomponius and a Religious Order. The case had been pending for many reasons, especially because the formula for raising doubts had been completed without his intervention, and because of a supplementary document, which, in its resolution or conclusion, suffered from excessive generality in the form of the petition, and did not contain the true object of the dispute. Indeed, the principal question concerning the agreements between Pomponius and the Religious Order, which had remained unresolved up to that point, was to be decided by the Congregation of the Sacred Council. But with great joy, we recently learned that all doubts have been dispelled, and that the integrity of Augustine Piccone (Pomponius) and his faith have been declared, and that the most desirable concord, which had been obscured by calumny and reproach, has been achieved, and that, with God's help, an amicable settlement has been reached between the distinguished Order of Carmelites and the heirs of Augustine, before the Most Reverend Archbishop of Janua.

In view of this fact, we gladly transcribe some of the agreements reached in the settlement, which pertain to its substance, so that, if anything appears to be less clear (and we know that the name "Augustine Piccone" is opposed by some, although the late, most upright and distinguished man, as mentioned in the aforementioned summary, always acted in accordance with his conscience), it may be corrected.

"Both parties (as stated in the preamble to the settlement) deplore all that has disturbed the intimacy that existed between the Order of Carmelites and the family of Piccone, knowing well that certain ambiguities have caused dissensions, which they are now glad to have finally been able to dispel, and errors. They also deplore the accusations made by certain people, ignorant of the true state of affairs, which have been published in the public press and which have attacked the faith and honesty of Augustine Piccone. Indeed, even civil magistrates have been

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offended by such statements."

[*Latin ed. p. 336*]

336. A WARNING concerning the reasoning of certain individuals. The very same arguments were raised, and repeated in a certain preface of a book printed by the press, intended to disseminate the opinion of the Sacred Congregation concerning a completed matter, namely, that, even though only one party was involved in the dispute, because of the generic form of the request made, the questions raised by the parties themselves were inflamed. "Furthermore, they acknowledge and declare that those accusations are false and non-existent, openly affirming that, while both parties could have been led to error, their faith, honesty, and integrity were never lacking. Whatever has been said or written from this place that may have admitted the possibility of error, they reject and deny." In the same preface, the Minister General of the Order of Carmelites added that he and the entire Order expressed their gratitude towards the deceased Augustine Piccone, for having preserved the property of the monastery of Saint Anne for the benefit of his Order, and for having provided a safer defense against the claims of the Italian government's ecclesiastical court, which had legally challenged the validity of the purchase made by Augustine. From this point, sentiments of gratitude are also expressed towards the heirs of Augustine. Finally, as a sign of this gratitude, the Religious Order undertook, among the mutual obligations of the agreement, to "celebrate annually a solemn Mass for the repose of the soul, in suffrage for all the deceased members of the Piccone family." The agreement was ratified by the Sacred Congregation through a rescript issued during the audience of His Holiness on September 15, 1882, which begins with "Having considered, etc.," for the purpose of granting approval to the proposed agreement.

[*Latin ed. p. 337*]

337. Letters in the form of a Brief, by which the College for Armenian Clergy is founded and established in Rome, were issued by Pope Leo XIII. FOR THE PERPETUAL REMEMBRANCE. The Church, the benevolent mother of mankind, conformed to the examples and precepts of her Author, Jesus Christ, never ceases to look to the salvation of the human race, so that, indeed, she extends her maternal "charity" to all nations, protecting with equal care those who are separated by differences in customs or by the distance of places. And this preeminence, truly divine, has been clearly recognized by the renowned Armenian nation, which, through long experience in many matters, has learned the extent and depth of this charity. For, as has been said, the Armenian people, partly through the work of the Apostles, and partly through the work of apostolic men, were already anciently vindicated for the freedom of the sons of God, and were embraced by the Catholic Church; and from that time, history

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speaks volumes, and the Roman Pontiffs, our predecessors, have devoted much care and study to Armenia, and that always with the intention, as far as was possible through them, to preserve among the Armenians those things which are greatly good in the state, namely, public dignity, concord, tranquility, and, above all, the sanctity of the Catholic faith, together with the integrity of true Christians. This has appeared, indeed, in recent times, and not in ancient times, but in times not difficult to recall. For Urban VIII admitted Armenian students to the Urban College for the propagation of the Christian name; Benedict XIV, after restoring the dignity of the Patriarchate of Coire, and Gregory XVI, through the establishment of the Constantinople diocese, and through the generous support given to the urban hospital for the reception of pilgrims from Armenia, testified to their excellent intentions by their actions themselves. Above all, however, will remain the benefit and grace of Pius VIII, whose very insistence, along with the King of France and the Emperor of Austria and Hungary, obtained from the Ottoman Empire's prince that he should command that the Armenians should be free from the servitude of the schismatic prelates. Benefit Ann., Tom. XV, fase. CLXXVI. With this accomplished, the Pope.

[*Latin ed. p. 338*]

338 Letters to the Primate, to whom all Catholics from Armenia were subject, were established in Constantinople, bringing an end to long-standing troubles. In a similar manner, Pius IX, from the very beginning of his pontificate, showed singular benevolence towards Armenia, and, over time, decreed many things which seemed to be for the public good of that people and for the safety of sacred discipline. However, if, in these recent years, the Catholic cause of the Armenians has been afflicted by an unexpected and grave misfortune, it is certainly not the constancy or the charity of this Apostolic See which have stirred up that turbulent sedition among a few misguided individuals. Rather, let us humbly implore the merciful God, the flame of whose patronage we have always trusted, that all may return to the holy Catholic Church, and that the former obedience to the Apostolic See may be restored, for the sake of which the Armenians have often endured grievous vexations and labors with remarkable fortitude. These things, which have been mentioned, move our spirit, inspired by the examples of our predecessors, and by the very service of the Armenian people within the Church, and incite us to strive for merit. Our spirit, moreover, is spontaneously inclined towards the East, to the glory of great virtues, and to the origins of the Christian name. For a long time, we have been considering in what way it is most fitting for Us to devote Our efforts to the benefit of that people. In this regard, we seem to have already achieved something, with the help of God, through the industry of apostolic men, both from the Society of Jesus and from Christian schools, whom We Ourselves sent to Armenia, and who are now in their third year

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of labor and prayer in the establishment of these institutions. However, We are determined to accomplish something greater, namely, to provide, as with many other nations, so also with Armenia, a home in the City, so that indigenous young men may be sent there generously to be educated, diligently prepared, and trained for the sacred duties. Indeed, nowhere is there perhaps a more opportune place for the training of suitable ministers of the sacred rites than in Rome, in this principal Christian city, near the greatest of the tombs, in the very sight of the Supreme Pontiff, who, as the vicar of God, is the father of all nations, and the guardian and interpreter of the Catholic faith. This, indeed, was foreseen by the provident mind of Gregory XIII, our predecessor, who, in an Apostolic Letter addressed to the Armenian Church in Rome, decreed the founding of a college in the City on the 113th day of October in the year 1584. Death.

[*Latin ed. p. 339*]

LETTERS 339: If the best of intentions did not win the approval of the Supreme Pontiff, certainly the course of the undertaken plan was interrupted. For a long time, the Armenian Bishops, having frequently come to Rome, had earnestly prayed, and finally, in memory of the Prince of the Apostles, they presented a book to Pius IX, so that what Gregory XIII had begun might be completed, not without the authority and care of his Holiness. And it is not to be doubted that various circumstances intervened, delaying the outcome of the cause, unless great confidence in the divine goodness had not already spurred us on to undertake this desired work: for its perfection and protection, we are willing to give and attribute as much as circumstances permit and as Our own will demands. Therefore, for the increase of the Catholic religion, and for the honor, utility, and benefit of the nation of Armenia, by these Letters, with Our apostolic authority, We establish and constitute in this venerable City a College of Armenian Clergy, and We grant to it all privileges and rights of a legitimate college, according to the laws written below.

I. Our beloved son, Anthony, Cardinal of the Holy Roman Church, Hassun, of Armenian nationality, who has deservedly earned merit for the Catholic faith among his people, shall undertake the patronage of the Armenian College as its first patron, and shall exercise the rights and powers pertaining to the College in that name.

II. Since it pleases Us that the College should have certain connections with the sacred Christian Armenian Council, in order to promote its name, therefore, for the remainder of time, the Cardinal who is the Prefect of this sacred Council shall be the patron of the College. If this patron is not, the Cardinal shall be designated as patron by the authority and with the approval of the Supreme Pontiff.

III. The Cardinal patron shall, even at the end of each year, report to the Supreme Pontiff by letter on the discipline and on matters pertaining to the

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College.

IV. The Curator of the acts of the sacred Council, or the President of the Council, shall be the administrator of the College's affairs, and he shall also be assisted by someone from the Oriental rites. If this Curator is not present, a Curator shall be chosen, by order of the Supreme Pontiff, from the established order of Anti-Urban clergy.

V. Students shall be admitted to the College by the Cardinal patron, with the authorization of the Episcopal authorities of the particular dioceses.

VI. Those who have surpassed the rudiments of the humanities shall be admitted, among whom those whose disposition seems more suited for the priesthood.

VII. These shall promote the Christian name in the Urban College.

[*Latin ed. p. 340*]

340 Letters to the schools, for the cause of studies: and, considering the danger, they are admitted to the academic degrees. VIII. The students, of Armenian nationality, who are at this time in the Urbanian College, are assigned to the College of the Armenians. X. The Urbanian College, from its treasury, in order to assist the declining number of students, or the College of books, shall pay six thousand Armenian silver coins of Italy, annually. These Letters of Ours, being firm and valid, shall remain in force. Finally, we wish that they be used, and that they remain so in the future: but we decree that they shall be null and void, if anything should happen concerning these matters, by anyone, that is not in accordance with them; notwithstanding any contrary things. Given in Rome, at St. Peter's, on the 1st of March, in the year 1883, under the seal of the Fisherman, in the fifth year of Our Pontificate. TH. CARD. MERTEL. FROM THE HOLY CONGREGATION OF THE COUNCIL CHAMBER. DISPENSATION FROM IRREGULARITY. On the 20th of May, 1882. By a summary petition. The priest Anselm, having presented a suppliant petition to the Holy Congregation, requested to be absolved from an irregularity, due to the amputation of the thumb and index finger. The Prelate, after being consulted about the information and the vote, reported: "Our Master of Ceremonies, after having made an examination, testifies that the aforementioned petitioner can indeed celebrate Mass; however, he cannot hold the sacred Host during the breaking, unless with the middle finger and..."

COMPENDIUM FACTI.

[*Latin ed. p. 341*]

DISPENSATION FROM IRREGULARITY 341: "to annul [a marriage], and to distribute the Eucharist to the faithful, except with the left hand; and that some small astonishment might arise before the eyes of the people, I,

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the undersigned, beseech that a suitable dispensation be granted, at least so that the aforementioned priest may be able to celebrate Mass privately."

Since many things have been omitted, both in practice and in law, concerning the matter, the judgment of the Most Eminent and Reverend Fathers was remiss in deciding what response should be given to the petitioner's prayers.

RESOLUTION: The Sacred Congregation, having considered the matter, responded on May 20, 1882: "For the grace, provided that the petitioner celebrates in a private chapel, or in a church at a time less frequented by the people."

ACHERUNTINO REGARDING A SPONSAL DISPENSATION. July 15, 1882. Through summary petitions. Peter stated, having presented a petition, that three years ago he had entered into a betrothal with Gratia, with the intention of, after completing his military service, consummating the marriage with her at that time; however, during the time that matters were being arranged, he had carnal relations with her. Having completed his military service, the petitioner stated that he learned that the girl did not have a good reputation, since she had already been defiled by her uncle, with whom she lived. Therefore, the petitioner stated that he entered into a betrothal with Mary, and that he had legally married her, with the intention of entering into a marriage before the Church, after completing the formal rites. But as soon as Gratia heard that Peter had contracted an ecclesiastical marriage with Mary, she immediately went to the Curia.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 342*]

342 Acerenza presented an obstacle to the legitimate marriage of Peter. After a summary process, the court, having considered the matter, and finding that the marriage and defloration had indeed taken place, and that the accusation made by Peter against Gratia, concerning incest and infidelity, was entirely unfounded, judged that the impediment presented by Gratia against Peter should be upheld. This decision of the court did not deter Peter, who approached the most sacred Prince, imploring a dispensation from the impediment to the marriage, in the manner of the poor. Upon receiving this humble petition, the Ordinary was instructed to report: "Whether, given the existing bond, by which the petitioner is hindered from fulfilling the duty of marriage, it would not be proper to resolve the matter through a monetary compensation, to be paid to the young woman who has been wronged." However, the Ordinary reported that Gratia had refused to agree to a resolution through monetary compensation, even though 200 [currency units] had been offered by Peter.

A summary discussion: THE MARRIAGE SHOULD BE DISSOLVED. It

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is expressly stated in Chapter [reference to a legal text] that a marriage can be dissolved, not only by mutual consent, but also when one of the spouses objects. Furthermore, the reasons for granting the requested dissolution appear to be beyond dispute. Indeed, there is first the impossibility of contracting a marriage with Gratia, due to the existing civil marriage with Teresia. There is also Peter's firm intention not to contract such a marriage, and there is the great aversion that Peter feels towards the woman, from which, in the case of a forced marriage, quarrels, contentions, and disastrous consequences would be feared. It does not seem to present a difficulty that Peter, in addition to the promise of a future marriage made to Gratia, has also violated it; since it is not uncommon, indeed, in even more serious cases, for such marriages to be dissolved. In truth, in Ostia, concerning a dispensation from marriage, among the reports of summary petitions, it is...

[*Latin ed. p. 343*]

In the case of a marriage promise followed by defloration, yet with just causes present, consisting in aversion of the mind and civil cohabitation, the Sacred Office, under the date of August 25, 1877, responded: "Consult with the Most Reverend [authority] regarding a dispensation from the impediment of marriage, after having presented at least two written petitions." (1) The same was confirmed in Bisinianen, on the day of September 19, 1841, and elsewhere. MARRIAGES SEEM NOT TO BE DISSOLVED. On the other hand, the requested dispensation seems to be to be denied, because, since there is no doubt that Peter, seriously and with a sincere intention of obligating himself, entered into a true marriage with Grace, it follows that if the grace of a dispensation were granted, the rights acquired by Grace through such a marriage would be gravely violated. Therefore, it is far from the case that Peter should be granted the requested grace of a dispensation; rather, he seems to be obligated to give testimony to the given faith, according to the text in chapter Uteris 10 concerning Marriages, in the aforementioned Council, paragraph 364, number 10, and also elsewhere. And even more so, because, besides the fact that Grace, due to the subsequent defloration, would remain forever dishonored, she would lose all future opportunity and hope of marriage. This is something that no sensible person would fail to recognize as of great value. With these considerations made, the question was posed to the Eminent Fathers regarding how the petitioner's prayers should be addressed. RESOLUTION. The Sacred Office, after re-examining the matter on July 15, 1882, responded: "After presenting two written petitions in favor of the bride, for the granting of grace, to the Most Reverend [authority]." (1) You have this question in

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Volume X, page 319.

[*Latin ed. p. 344*]

August 12, 1882. The Bishop of P. reported to the Congregation of the Council that there were two canonical benefices, subject to lay patronage, vacant in the Collegiate Church of T.; one pertaining to the Duke of P., and the other to the local Municipality; and that the Duke had nominated a priest, Joseph. The Bishop stated that, since the Municipality had presented no one within its jurisdictional limits, the right of presentation had devolved upon him, and he had decided to confer the benefices. While the matter was made known through public edicts, the Dean of the Collegiate Church proposed resolving certain doubts before the two canonries were conferred. The Bishop suspended the nominations, pending the resolution of the doubts, and observed that the core of the question lay in the fact that the Collegiate Church had been suppressed in 1867 by civil law, and its goods had been transferred to the public treasury; thus, a pension for life had been granted only to those beneficed at the time of the suppression. With these premises, the Dean proposed the following doubts: I. Whether the right of presentation can be maintained by the patrons after the suppression. And, secondly, II. Whether the patronage can devolve upon the Chapter, since it pertains only to the canons to share in the administration of the affairs of the Church, including the institution of new canons?

SUMMARY OF THE FACTS.

WHAT IS IN FAVOR OF THE PATRONS.

It is an incontestable principle of law that a presentation to a vacant benefice made by a patron is valid, provided that no defect occurs, either on the part of the presenter or the presented, which would invalidate it.

[*Latin ed. p. 345*]

JURISDICTION 345 lacks strength. Furthermore, it is a settled matter of law that a benefice conferred through patronage, once established, remains subject to the patronage as long as it has not been extinguished by the causes and means prescribed by the Holy Canons. Therefore, if there is no defect, either in the subject matter or in the presentation, and the presentation has been duly carried out, the benefice must be held to be valid; and likewise, if the benefices subject to patronage have not been extinguished by the means prescribed by law, the right of presentation spontaneously belongs to the patron, and therefore the presentation made by the patron, with the favor of the priest Joseph, must be maintained in full force. The aforementioned benefices should not be considered extinguished simply because the collegiate church was suppressed by the civil law of 1867, since

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it is a well-established principle of law that whatever the civil power disposes of concerning goods belonging to the Church, it must be considered null and void, even if such disposition seemed to be for the benefit of the Church. This is even more so in this case, since it has been ascertained that the disposition of the civil power does not serve the benefit and good of the Church, but rather turns to its manifest detriment and prejudice. See Cap. 10 of the Constitution; Cap. 12 of the Decrees of the Council of Trent, concerning ecclesiastical property; Cap. 8 of the Decrees of Fagnan. See Fagnan, in Cap. 30 and 31, where the reason for this nullity is given, namely, that the laity lack jurisdiction over ecclesiastical persons or the goods of the Church; Fagnan, cited, loc. cit. – and there, it is further stated that even if the statutes of the laity are favorable to and beneficial for the Churches, they are nevertheless invalid due to the lack of authority. . . . The same is taught by Piton, in the controversy on patronage, allegation 57, number 70, and it is affirmed in Pot. cor. Cavai, decision 494, number 2. Therefore, if the collegiate church has been suppressed by the civil power, while the Church, to the extent of its ability, objects, it is clear that such suppression must be considered to have no validity, at least in the eyes of the Church; and therefore, the aforementioned benefices should be considered to exist. For that which...

[*Latin ed. p. 346*]

346. The patronage [ius patronatus] produces no effect, as is stated in I, 4, §. It is condemned in the *rejudicatio* and in Chapter 8 concerning patronage. But it is argued that, conversely, if the Church or the patronage itself is destroyed, or if the revenues are completely lacking, then the patronage, which is inherent in these things, must necessarily perish; since no qualities exist in a non-existent thing (Leg. 1 ff. concerning inheritances, or sales, and the *Loc* in the commentary on patronage, no. 4; Piringh, ibid., title 188). However, it is one thing to destroy and cause something to perish by the authority of a superior, for a known reason, or by the nature of things, and another thing to usurp or take something *de facto* against all principles of human and divine law. This distinction is keenly emphasized by Piton, in *Discept. Eccles.* 8, no. 18; where he refers to the elegant doctrine of Baldi in *Mar gor.* ad Innoc., found in the passage under the word "civitas." Therefore, if the goods and the patronage of the Church have been occupied, not by right, but only *de facto* by an illegitimate power, it is clear that the Patrons have not lost the right to present candidates. Nor does the argument presented by the Dean of the Chapter seem sustainable, namely, that if such new Canons, nominated by the Patrons, were admitted into the Chapter, they would profit from another's gains, losing nothing of their own, or would participate in the choral distributions, contributing nothing in common, as if they were Canons without a stipend, and thus would prejudice the Chapter. However, no serious harm or damage arises

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to the Chapter; indeed, the decorum of the choral service and the sacred functions are best served. Although, if the matter is examined more closely, the hypothesis devised by the Dean of the Chapter cannot hold true. For, after the law of suppression, the Canons, up to the present, are completely lacking in funds for the choral distributions, since they have never contributed anything in common. This is confirmed by the Canon Lidestri, most recently nominated, from documents of the Chapter's treasury. If, however, the validity of the presentation made by the Patron is accepted, it does not appear that there is any valid reason why the same should not be said of the nomination of another to a benefice to the Bishop, for this...

[*Latin ed. p. 347*]

JURISDICTION 347: In the case of negligence on the part of the Municipality, the right devolves to the Ordinary; this occurs when, within the time limit established by law, the Municipality fails to present a suitable candidate for appointment by the Ordinary. It is indeed a settled matter that, if the lay Patron fails to present a suitable candidate for appointment within the prescribed four-month period, this right for that occasion devolves to the Ordinary, beyond any doubt, as evidenced by what is stated in Argument, Chapter 22, and Chapter 27 concerning patronage; also, Barbosa de Officio et Potestate Episcopi, Allegation 72, numbers 141 and 168; the Abbot in Chapter 3, title "Quoniam," with common consent. Furthermore, given that, following the suppression of the Collegiate, the Patron loses the right to present a candidate, it is not understood how such a right, as the Dean contends, could pass to the Chapter. For it is well known in canonical jurisprudence that the right of patronage, in certain ways established by law, is acquired, primarily through the foundation, construction, or endowment of a Church, and this applies both to laypersons and to clerics, as taught by the commonly accepted Gloss in Chapter 26, title "Piae Mentis," verse idem, cause 16, question 6; the Abbot, in the aforementioned title, number 7, Silva, in luspatronatis, question 1; Azor, cited, Chapter 19, question 3; and other Doctors, commonly. Thus, the well-known phrase "Patronum faciunt, dos, aedificatio, fundus" (a patron is made by a gift, a building, a fund) is affirmed in the Council of Trent, Session 14, Chapter 12, and Session 25, Chapter 9, concerning Reform. However, it has been discovered that the Canons contribute nothing to the reception of new Canons. Therefore, it cannot be understood on what basis the Chapter presumes to claim the right of patronage in the election of new Canons. The Dean maintained, albeit in vain, that the right of patronage belongs to the Chapter, arguing that the Chapter grants more favors to new Canons, and especially, as he himself stated, that they are admitted to a share of the daily distributions, which are not derived from the aforementioned points. Finally, the Chapter sought to claim this right, asserting that such Canons should be called honorary Canons, and that the right to elect honorary Canons resides "in

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corpore" with the Chapter, and not with the Patrons. In truth, this right belongs more properly to the Bishop, who, with the consent or advice of the Chapter,

[*Latin ed. p. 348*]

348 Considering the patronage, it is traditionally held that honorary canons are to be chosen as decreed by the Sacred Congregation for the Council, Volume III, page 138 of these documents. Therefore, it is clear that the nomination of new canons does not pertain to the Chapter. WHAT FAVORS THE CHAPTER. On the other hand, the patron, chosen by the Dean of the Chapter, presented a claim, striving to demonstrate that he had lost the right to nominate, and that such a right had devolved upon the Chapter in the actual circumstances. To effectively demonstrate this, he pointed out that, according to all, the principal right of patronage consists in the power of presenting a candidate for a vacant benefice, as stated in Chapter 3 on the law of patronage, and in Chapter 1, paragraph 6, on presentations. Thus, Engel, in book 3, title 38, number 2, clearly states that patronage consists in the power of presenting someone to a benefice that is vacant. He also states, without a doubt, that this right persists as long as the matter subject to patronage remains in its proper state; otherwise, it must be said that it ceases to exist if the matter no longer exists. For a right cannot be exercised in a matter that has ceased to be. Therefore, all Doctors hold that patronage is lost through the destruction of the church, the loss of the endowment, and the loss of income: "Patronage is lost if the church is completely destroyed, or even if the endowment and income are completely lost, and it will not revive, even if the church is rebuilt or endowed again, unless the former patron agrees to the rebuilding or endowment," Engel, loc. cit., number 26. Especially if the destruction of the church or the loss of the benefice occurred through the negligence and inaction of the patrons, upon whom the duty rests of taking steps to protect the church and its property, so that they are not improperly alienated or squandered, Engel, loc. cit., number 5. Given these established legal principles, and considering that it has been determined that the benefices in question have ceased to exist; and that it has also been determined that these same benefices have been suppressed through the fault of the patrons, because they did nothing to preserve the benefice's endowment; it follows that, along with the benefices, the right to nominate has also been lost. For when the principal thing is lost, the accessory also perishes.

[*Latin ed. p. 349*]

SECTION 349. The law dictates that the patronage must lapse, a rule of law that is not commonly disputed. The advocate insists that this principle holds even more strongly in this case, not only because, according to instructions issued by the Sacred Penitentiary on June 13, 1868, the patrons

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of this type were able to deduct benefits from the public treasury through the payment of taxes; but also because they could conveniently do so, provided that the Sacred Tribunal granted the patrons the power to reduce, suspend, or sell a portion of their assets in order to safeguard their own interests. However, since the patrons have not taken any action to protect the sacred benefits and ensure their proper administration, the advocate argues that they have forfeited their right of patronage. Furthermore, the advocate adds, once the benefits have ceased, nothing remains in the collegiate church except the highest title and name, the granting of which, he contends, belongs to the Chapter. Consequently, he argues, such canons, deprived of the revenues of the benefice, can rightfully be called honorary canons. He states that the designation of honorary canons pertains to the Chapter, because it is the Chapter's duty to provide for greater worship and to maintain the choral service. To support his argument, he cites Van Espen, who in volume 3, § 19, paragraph 2, section 3, title 4, concerning the order of benefices, states: "Just as it is natural for the canons of a cathedral, together with their bishop, as with their head, to elect the members of their body, so too, by common law, the election of canons in collegiate churches seems to pertain to the canons together with their dean, or to that person who, together with the canons, constitutes one body, or Chapter." With these preliminary remarks, the following question is to be addressed: Who has the right of patronage in this case?

RESOLUTION. After deliberation, the Sacred Congregation decided on August 12, 1882, to respond: In the case under consideration, the answer is negative in all respects.

[*Latin ed. p. 350*]

350. ON ECCLESIASTICAL PATRONAGE. From these [principles], the following may be deduced: I. Since the law of the canons requires a foundation, construction, or endowment of the Church in order to acquire the right of patronage, and the words "gifts, buildings, and lands make a patron," it follows that no one can exercise any authority in bestowing [benefices] in those cases in which they have contributed nothing to their establishment. II. Nevertheless, the rights of patrons, the first of which is the power to present a cleric to a vacant benefice, continue to exist as long as the matter subject to the right of patronage remains in its original state. III. It cannot be doubted that the canons of the collegiate church have lost their endowments, both through the compilation of the Fiscal accounts and through the negligence of the patrons; who did nothing to preserve them; therefore, it must be said that they have perished, if not by right, then certainly in fact; but in a matter that has ceased to exist, no one can exercise any right. IV. Those canons of a collegiate church, of whom only the title or name remains, cannot be considered as honorary canons; for honorary canons are created by the Bishop with the consent of the Chapter,

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or even by the Chapter with the consent of the Bishop (1).

ROMAN DISPENSATION. December 16, 1882. By summary petition. The cleric Marcellus, a member of the Society of Jesus since 1866, and already bound by perpetual vows, petitioned that he might be able to be promoted to the Holy Orders, although, due to a grievous infirmity of sight, which he calls hyperesthesia, he is compelled to abstain from any reading.

SUMMARY OF THE CASE. (1) Compare Vol. III, page 138, *ad hoc* ephemeris.

[*Latin ed. p. 351*]

ROMVNA 35f, and therefore even excused from the recitation of the Divine Office, and permitted to dedicate himself to other prayers; fostering, moreover, the hope that the illness, now milder, will finally be cured with diligent care. The prayers are strengthened by the testimony of the attending physician, who also reports that the supplicant enjoys excellent health. Furthermore, a most esteemed document from the Provincial Superior is presented, from which it is gathered that, whether teaching grammar in colleges of the Society of Jesus in Austriae and Galliae, or entrusted with the direction of seminaries, he has always combined the praise of his intellect with the virtues of religious life.

Disceptatio Synoptäea. PRAYERS ARE WARRANTED. It is certain that one suffering from a defect of the eyes is irregular, not only being hindered from being promoted to the orders, but also from receiving the first tonsure; Pigliateli, consult. 145, no. 7 and 8, and Barbosa de Episcop. par. 2, alleges. 42, no. 27 and 29. For when it is a question of promoting someone, for whom no reason of necessity or utility appears to require that he be co-opted among the clergy, there is no reason to request a dispensation. Let the example of Pampilonensis be recalled. A dispensation was granted on March 28, 1733, recently reported in a document from Geneva, which will be discussed below. The case concerned a young man of noble birth, who, having devoted himself to the study of literature, had almost completely lost his sight, perhaps due to the excesses of his studies; yet, his eyes remained whole. But he did not abandon his studies, and, using the help of others, he learned what he could not see through his eyes, by hearing. And thus he made considerable progress; for he acquired knowledge of sacred and profane history, as well as catechism and the mysteries of the faith; finally, he learned to play the cymbals. Desiring to be admitted to the clerical state, the Bishop, praising the character of the man and other virtues, considered him worthy of a dispensation to receive the first tonsure, and to be capable of attaining ecclesiastical benefices.

[*Latin ed. p. 352*]

352 In ROMA, they reported, affirming that he had been able to recite the Office of the B. Virgin Mary and of the dead with devotion. Further-

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more, it was noted that he would not be entirely useless to the Church; he could certainly impart the elements of faith to children, play the organ in divine services, and, finally, through the integrity of his morals and pious practices, be of benefit to others by example, which is a kind of perpetual preaching. However, regarding the doubtful matter of "Whether to consult with the Most Holy Father regarding a dispensation for the cleric to receive the first tonsure," the response was "No." PRAYERS ARE TO BE OFFERED. Let the Eminent Fathers consider whether these matters are of such weight as to deprive the cleric himself of hope for grace. For although, in effect, his infirmity can be somewhat equated with blindness, since he is prevented from reading, he cannot nevertheless be called blind, nor therefore properly irregular; but he is detained by a temporary impediment, which may also cease shortly. In truth, the physician reports that his illness has been alleviated by the aid of medicine. Otherwise, we are dealing with a cleric who has been admitted to the lesser Orders, aged thirty-three years, and, what is more, bound by a perpetual vow of religion, to whom it would be very distressing and burdensome to be kept away from the sacred duties for a longer time until the force of the illness is completely removed. In a worse, but true, hypothesis, if the cleric Francisco Xaverio Dufesne, of the religious family of the Vicariate Apostolic of Genevensis, should remain with impaired vision, let us remember the recent proposal made in Genevensis, among the Summaria Precum [Summary Prayers] of March 20, 1880. It concerned a cleric who had almost lost the use of his eyes, and who had only a vague and nebulous vision. In the year 1876, Pope Pius IX, moved by the prayers of the Vicariate Apostolic, granted, despite this defect, that he might be promoted to the holy orders of Subdeacon and Deacon. Then, when a book was offered to the Most Holy Father so that he might be raised to the order of Priesthood, the response on March 20, 1880, was: "Having considered, etc., for the sake of grace, with the permission for the cleric to celebrate the votive Mass of B. Mariae."

[*Latin ed. p. 353*]

ROME 353. Concerning the Virgin and the obligation of assistance to another Priest or Deacon, having made a request with the Most Holy and Most Reverend [authorities], and having been graciously approved and confirmed by the Most Holy [authority]. And it is to be noted that these present prayers were also submitted to Your Eminence by His Holiness. Having noted these things, the question was raised as to how the petitioner's prayers should be addressed. RESOLUTION. The Sacred Order of the Council, having considered the matter, responded on December 16, 1882: "Considering, etc. For the sake of granting, with the faculty for the petitioner to celebrate a votive Mass to the Blessed Virgin, and the obligation of assistance to another Priest or Deacon, the burden of the divine office being transferred to other prayers to be determined by

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his own superior, having made a request with the Most Holy [authority], namely, the Most Reverend Chamberlain." POSTULATE CONCERNING STIPENDS FOR THE EXECUTION OF APOSTOLIC DISPENSATIONS, August 12, 1882. Through summary prayers. On July 14 of the year 1881, Alfred Duquesnay presented a suppliant petition to the Most Holy Prince, explaining that: "To his most eminent predecessor, on July 27, 1857, the Most Holy Fathers, the N. Popes, Pius IX, granted the faculty of using the following tax: 'To the Chancery are paid for ordination certificates, the sum of... 150.' Provisions for Canonries, 24; Parishes, 1st Class, 24; 2nd Class, 18." SUMMARY OF THE MATTER. Acts, Volume XV, page CLXXVI.

[*Latin ed. p. 354*]

304 CAMERACEN*. » For the parishes that have more than three thousand inhabitants: 12.

» For the provisions of parishes that have from one thousand to three thousand inhabitants: 9.

» For the provisions of parishes that do not have one thousand inhabitants: 6.

» For the stipends of Vicars: 3.

» For dispensations concerning impediments: 3.

» Concerning prohibited times: 3.

» Concerning impediments of consanguinity and affinity up to the third degree inclusive: 6.

» For dispensations for the erection of confraternities: 3.

» For the Stations of the Holy Cross: 3.

» These taxes somewhat exceed those established by Innocent [III]. However, if these were now strictly observed in this time and in these regions, they would not be sufficient to cover the necessary expenses of the Chancery. Therefore, the Archbishop, the speaker, humbly implores an Indult, by virtue of which he may use the same taxes.

» Furthermore, since the price of necessities increases daily, and in these troubled times the revenues assigned to the Bishops have been diminished, and, what is worse, since what remains of these revenues is entirely unstable and therefore uncertain, the aforementioned Archbishop humbly requests:

1. That he may be able to determine the tax for dispensations concerning impediments of consanguinity and affinity up to the third degree inclusive, according to the resources of the petitioners, as is done in the Roman Curia; and

2. That if anything remains, after deducting the necessary expenses of the Chancery, it may not only be used for pious works, but also for the necessities of life. For the revenues of the Archbishop, the speaker, have been

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reduced by twenty thousand francs, compared to the revenues enjoyed by his predecessor, Régnier.

[*Latin ed. p. 355*]

CHAMBER PROCEEDINGS. 305. A SYNOPTIC DISCUSSION OF OBJECTIONS. And, in the first place, such requests appear to merit a negative response when they contradict the prescription established by Pope Innocent XI concerning the fees to be collected. Indeed, the Innocentian regulation states that in matters of marriage or betrothals, in the execution of Apostolic matrimonial dispensations, the Bishop, his Vicar, or any other official may not accept any gift or fee, etc. Only the chancellor is permitted to receive a just compensation for his labor; thus, in the execution of dispensations and for witnesses to ascertain the freedom of the parties, *the amount required should not exceed one scudo*. This fee, it is stated, even in foreign regions, obtains its value in the present circumstances, and has the force of law, as Cardinal Petrucci states in *Constit. Apost. tom. 1 Prooem. §. 3 num. 32*, citing Terracona. The fees of Innocent are mentioned on May 2, 1699; and Œrald. *Ius Pontifie. §. 2 sect. 53* refers to several resolutions of the Sacred Congregation of the Council. This is also affirmed by Doctors and Canon lawyers, among whom is Fagnanus in *De Decretais. Ne Praelati vic. suas cap. Quoniam num. 30*. Now, in our case, a fee is presented that exceeds the Innocentian amount; indeed, the Archbishop himself, in his petition submitted to the Sacred Congregation of the Council, states, "that the fee in question exceeds the Innocentian amount by..." Therefore, it does not seem permissible to grant, spontaneously or otherwise, the request of the Archbishop, so that he may use the fee that exceeds the Innocentian amount. Even less permissible seems to be what the Archbishop requests in the second place, namely, "that, after deducting the necessary expenses of the Chancery, whatever remains may be used not only for pious works, but also for the necessities of life."

OBJECTIONS. However, since, from the facts presented in this specific case, it is evident the reasons for which the Most Blessed Pope Pius IX granted an indulgence for a fee that slightly exceeded the Innocentian amount, it appears that...

[*Latin ed. p. 356*]

356. The Archbishop should grant the orator the use of the room. It should be permitted to him to use the same tax, which was granted to his most eminent predecessor. Indeed, since the economic circumstances of the orator have worsened and have turned for the worse, it is up to the Most Reverend Fathers to consider whether it should be granted to the orator what he requests in the second place, namely, "that, if anything remains after the necessary expenses of the Chancery, he may be able to and should be able to use it, not only for pious works, but also for the necessities of

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life." With these things noted, the question was raised as to how the prayers of the orator to the Archbishop should be addressed. RESOLUTION. The Sacred Congregation, having knowledge of the matter, on August 12, 1882, decided to respond: "Having considered the tax granted by the Most Holy Pope Pius IX, for the use of which the faculty is stated, until new ordinances of the Holy See are issued, let it be so decreed with the Most Reverend [Archbishop]." (1) (1) Compare Granaten and Mindonen, reports in this volume, page 111, so that you may see with what rigor stipends are prohibited in the execution of Apostolic Dispensations. SECOVIEN. DOCTORAL CANONICATE. On September 9, 1882. SUMMARY OF THE MATTER. The Ordinary of Segovia in Hispania, on October 15 of the year 1881, appealed to the Sacred Congregation of the Council, urgently requesting a solution to the following doubts: "1. Whether, for the provision of the Doctoral Canonry today vacant in this Cathedral, those who have obtained the degree of licentiate or doctorate in both civil and canon law should be summoned, but also those who have obtained a license or doctorate in canon law from one of our central seminaries, as is stated in the Bull of Sixtus IV, *feliciter*."

[*Latin ed. p. 357*]

SEGOVIA. In the year 357, it was destroyed, and this occurred in almost all, or indeed in all, the dioceses of Spain. And to be precise. "2° If the Chapter, by introducing some abusive custom, contends that only those who are licensed or doctors in both laws should be summoned, whether the Bishop can and ought to reject said custom, since it is contrary to common law, to the constant practice of the Spanish churches, to the most recent concordat, and also is unjust and harmful to our conciliar seminaries and to the students who pursue ecclesiastical studies therein." Synoptic Discussion. DEDUCTIONS OF THE CHAPTER. The canons of the cathedral church of Segovia contend that only those who have obtained the degree of licentiate or doctorate, not only in canon law, but also in civil law, should be admitted to the canonical doctorate. They claim that this can be demonstrated on two grounds, which are proper to the nature and essence of the canonical doctorate and to its observance. Regarding the first point, the canons observe that the doctoral professorship was established in the Kingdom of Spain by Pope Sixtus IV, so that those who successfully completed the examination for this professorship would not only assist the Chapter in its deliberations, but would also, whenever the rights of the Chapter were challenged, defend them before the civil tribunals, with all their power. Having established this, the canons argue that only those who have been awarded a degree in both laws can obtain and hold this professorship. If this were not the case, the institution of the doctoral professorship would be almost entirely useless, since it is well known that those who lack the knowledge and degree in civil law cannot plead their cases before the civil

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tribunals. This degree is even more necessary in the present time, because the Spanish government... [The text is incomplete here.]

[*Latin ed. p. 358*]

353. SECONDLY. The Church's own tribunal has been deprived of the power to render judgments. Hence, the rights of the chapter, if violated, must be defended before civil tribunals, to which only those who have received a civil degree are admitted. Therefore, if someone were to be chosen as a canon doctor who had not obtained a degree in civil law, it would follow that not only would the rights of the cathedral church remain undefended, to the grave detriment of the church itself, but also that the institution of the canon doctor would become almost useless. However, even admitting that the rights of the Church, when brought into dispute, can be defended by lay advocates in the civil tribunal; nevertheless, it is more fitting that a canon doctor should possess both degrees, and therefore, the chapter maintained that only those who had obtained the degree of licentiate or doctorate in both civil and canon law should be summoned for the examination. But, not only from the nature and character of the doctor's office, but also from the custom in force in the cathedral church, it can be demonstrated that this is the case, as is evident from the edictal notices, which are extant in the archives. This observance, once established, must be maintained with full force, and no one who is completely ignorant of canon law will doubt this. It is also irrelevant that the Bull of Sixtus IV, issued for the establishment of doctorates in Spain, stipulates that for the appointment to this office, a doctor or licentiate in either or both laws must be chosen; for custom, if it is reasonable and legitimately prescribed, possesses such force that it can even abrogate positive law, as is stated in Chapter 11 on Custom, and in Chapter 8, Section 10, of the *Dilectus*. Furthermore, the Code of Canon Law, under Benedict XIV, book 12, chapter 8, number 8, concerning diocesan synods, states: "Nothing more can a human law, even a canon law, be contradicted by a custom which is reasonable and legitimately prescribed." Moreover, the aforementioned custom is reasonable outside of...

[*Latin ed. p. 359*]

SECTION III, PARAGRAPH 9: It seems that all doubt has been removed, since the matter pertains to the greater adornment of the Cathedral and Chapter of the Church. Furthermore, it also seems certain that the time for legitimate prescription has arrived, and that the assertions of the Chapter should be upheld. Moreover, it does not matter that the objection is raised by the Bishop, since what is permitted only in the canon law of other churches in Hispaniae is admitted here; for it has been discovered by the investigation of the law that custom is not to be extended case by case, or place by place, *I. 3 in fin. de testam. Brad. cons. 237 col. 1, Surd. cons. 322

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n. 13, Gratian, in the aforementioned passage, n. 12.* Finally, for another reason related to the facts, the Chapter contends that only those who are licensed in both laws should be summoned to the examination, because the Government would certainly deny the institution and endowment to the Canonicals with doctoral degrees, which have customarily been granted to those with a doctorate in canon law after the Concordat of 1831, because the basis for the institution of these would be lacking. And therefore, considering the nature of the doctoral benefice, and the custom, it follows that those who are licensed in both laws, or are Doctors, should be summoned to the competition.

OBJECTIONS OF THE BISHOP: But to all of this, the Bishop objects, arguing that both licensed individuals and doctors in both laws, as well as licensed individuals and doctors in canon law, should be called and admitted to the competition for the aforementioned canonry, whether from a royal university or from a central seminary. To effectively demonstrate this, the Bishop first argues that the doctoral degree was established so that whoever possesses it can vindicate the rights of the Cathedral Church before secular tribunals, but rather it seems to have been established so that a man skilled in canon law can assist the Chapter with his counsel and judgment in difficult matters. For there are more means available to vindicate the rights of the Chapter, when it is necessary. And the Canonicals with doctoral degrees could not do this before civil tribunals, because they are, for the most part, never enrolled in the college of advocates, due to the heavy expenses. If it were necessary that...

[*Latin ed. p. 360*]

360 SEGOVIEN. If a canon doctor were to exercise the office of advocate before a civil tribunal by his own authority, it would be necessary to say that all the Chapters, far from neglecting their rights, should take care of them: for simple canonists are admitted to this prebend in all Cathedrals. Furthermore, the Bishop said: The Supreme Pontiff Sixtus IV, of blessed memory, in the Bull of erection, established that both [types of] lawyers should be called, indicating: And one doctor or licentiate in each [type of law]... And the other, who is a doctor or licentiate in the other [type of law]... By almost all the Cathedrals of Spain, licentiates or doctors in canon law are not excluded from competing for a doctoral prebend; indeed, today, in many Cathedrals, a licentiate or doctor in canon law holds this prebend. It should not be forgotten, the Prelate added, that among us, these licentiates and doctors are fit to exercise the office of Vicar General: therefore, why should they be excluded from obtaining a doctoral prebend? But, the Bishop continued, if some distinction were to be admitted between licentiates and doctors in both types of law from any University, and between licentiates or doctors in canon law from central seminaries, it should undoubtedly be made in favor of and for the benefit of the latter: for the ti-

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tles conferred in seminaries produce canonical effects by themselves, while titles conferred by Universities require ecclesiastical validation. The faculty of canon law in the seminaries, established by the latest Concordat, would serve no purpose if these aforementioned licentiates and doctors were to be excluded from ecclesiastical offices, which are the proper domain of this faculty. Moreover, today, the cathedral Chapters are entirely lacking in temporal goods, and therefore, at any other time, the reason requested could be invoked, namely, that canon doctors before civil tribunals must defend goods and rights of this kind. In the opinion of the Chapter, there is no papal brief, and no true, memorable custom.

[*Latin ed. p. 361*]

SEGOVIEN. 361 It is clear that no decree exists concerning this matter from the silence of the Chapter; and it is evident that custom does not favor it, for the last provision for this canonry took place before the Concordat of the year 1831, that is, at a time when degrees were not conferred by Seminaries in the faculty of Canon Law. Therefore, since an end must be put to the discussion thus far, different from that which the Chapter has advocated, having in view the institution to be made, and since it is also clear that the custom upon which the Chapter relies lacks any foundation, it necessarily follows that, in the list of those to be considered for the doctoral position, not only those who have received a doctorate in both laws should be included, but also those who have been honored with a license, or doctorate, in Canon Law alone.

Having stated these premises, the question to be resolved is: Whether, for the purpose of a competition for a doctoral canonry, only those who have obtained a license or doctorate in both laws should be admitted, or rather, whether those who have obtained a license or doctorate in Canon Law alone should also be eligible to be called to the competition.

RESOLUTION. The Sacred Congregation of Councils, after deliberation, on September 9, 1882, decided to respond: Negatively to the first part, and affirmatively to the second, and furthermore.

FROM WHICH WE GATHER: I. From the very words of the Bull of Sixtus IV, it can be seen that both licentiates and doctors in both laws should be considered, and then licentiates and doctors, whether in one law or the other, should be admitted to the competition for the doctoral position. (1) (1) Compare Barbastren, *super concursu ad praebendas magistralem et doctoralem*, Volume XIII, page 81. In that same question, it was already resolved that licentiates in Canon Law could also be admitted to the competition for the magistral and doctoral positions. If, therefore, from that resolution, licentiates in Canon Law are eligible for the doctoral position, how could those who have obtained this degree in Seminaries be excluded,

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without any detriment to the Faculties of Canon Law themselves?

[*Latin ed. p. 362*]

362 CONCURSUS II. If, hypothetically, the contrary were admitted, the institution of the faculty of Canon Law in the Seminaries would be rendered futile, and, consequently, those licensed or holding degrees therein would be unjustly removed from ecclesiastical offices. — CONCURSUS On September 9, 1882, the offices of Archpriest of the Collegiate Church and Chapter of T., to which the care of souls was attached, and of the Parish of St. Margaret, became vacant due to death. Therefore, the Episcopal Curia, through public edicts, called for a competition according to the procedures of the Council of Trent and the apostolic Constitutions. The Priest Ferdinand presented himself for the Archpriestship, and the Priest Philip presented himself for the Parish of St. Margaret. Having undergone an examination, which was the same for both positions, the Examiners declared the Priest Philip suitable for the parish of St. Margaret, and he received the appointment fifteen days later from the Bishop. Regarding the Priest Ferdinand, they reported as follows: "Having completed the examination on the fifth day of this month of September, concerning the age, morals, doctrine, prudence, and other qualities of the priest Ferdinand for the vacant Archpriestship, we have found that he has completed 59 years of age, and possesses a certain degree of morality and prudence; concerning doctrine, however, he can scarcely be approved; hence, considering rather his other qualities, we judge him suitable, and we present him to the Bishop." Having knowledge of this report, the Bishop, after considering also the writings and qualities of the priest Ferdinand, decided to postpone the appointment. The aforementioned priest received this news with displeasure, especially because the other candidate had already obtained the parish. Consequently, he began to stir up trouble with the Bishop, as will be detailed in a *COMPENDIUM* of the facts.

[*Latin ed. p. 363*]

CONCURSUS 363, by its own right, was not deprived of its place, especially since it had received a favorable outcome from two examiners; but this is irrelevant. Therefore, on September 10, 1880, a formal appeal was issued to the Congregation of the Holy Council for the preservation of its rights, which were being violated.

Synopsis: No official observation was made regarding the proposed question, but the examination of the case of the concursus was referred back to the Consultor. We summarize here what he wrote regarding the law and the merits of the case.

OPINION OF THE CONSULTOR. The Consultor forewarned that this question had its difficulties; and therefore, before expressing his opinion, he considered it appropriate to preface his remarks with something con-

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cerning the right that Ferdinand might have to obtain the benefice. Hence, he stated: "The Holy Council prescribes in Session 24, chapter 18: 'After the examination has been completed, in the concursus, as many as are judged suitable by the examiners, in terms of age, morals, doctrine, prudence, and other matters suitable for governing the vacant Church, shall be admitted; and from among these, the Bishop shall choose him whom he judges to be more suitable, and the collation of the Church shall be given to him, and not to another, to whom it should pertain to confer it.'"

From this ordinance of the Holy Council, it is clearly evident that, notwithstanding the concursus, the conscience and judgment of the Bishop remain to determine who among the candidates is more suitable, and although all, both theologians and canonists, agree that the Bishop is obligated to choose the more worthy among the suitable candidates, especially when it concerns a benefice to which the care of souls is attached, nevertheless, all agree that "the Bishop is not obligated to conform his judgment to the judgment pronounced by the examiners, and he can, in part, reform the judgment of some of the examiners, determining that he is more worthy who was only declared worthy or merely suitable by the examiners." He renounced the more appro-

[*Latin ed. p. 364*]

364 CONCURSUS: "The matter has been entrusted solely to the judgment of the bishop," says Benedict XIV in *De Synodo Dioecesana*, book 4, chapter 8, section 6. The Sacred Council's Congregation has defined this very thing many times, as can be seen in a certain document from the Parish of Monte Alto, dated July 17, 1862. Therefore, in the case of multiple candidates, even if, based on the more favorable judgment of the examiners, one is deemed more worthy than another who was merely approved, that more worthy candidate does not acquire any right to obtain the benefice, otherwise, the election and renunciation by the more worthy candidate among the approved candidates would not remain solely within the judgment of the bishop. However, in the case at hand, we have a situation of *libera dispositio*, rather than a true competition, so the question of what rights Ferdinand might acquire must be considered absolutely, and not in relation to the other candidates. Furthermore, having consulted with various learned doctors, he believes that, even though Ferdinand was declared suitable by the examiners to the bishop, he did not, absolutely speaking, have the right to be nominated and approved by the bishop for the parish benefice, especially since the granting of the benefice belongs to the bishop. For Reclusius, in *De Concursibus*, Part 2, Title 5, number 46, states: "A competition does not perfect or complete the act of granting [the benefice], but merely disposes and prepares for it, and this does not require demonstration." And Cardinal De Luca, in *Theatro veritatis et iustitiae*, discourse 70, numbers 16 and 17, teaches that "in benefices of

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free granting, through opposition, no right is acquired, either in the matter itself or with regard to the matter." However, he adds that, in the case of debts, a right with regard to the matter is acquired only by a certain class of persons. It must now be considered whether there are truly very serious reasons, by which, despite the favorable outcome of the competition, the priest Ferdinand should be excluded from the granting or acquisition of the parish benefice. First, according to the report of the examiners, we have that...

[*Latin ed. p. 365*]

Three hundred and sixty-five candidates are named as priests; concerning their doctrine, they can scarcely be approved. Hence, considering rather other qualities, the Examiners judge that they are suitable. One might initially doubt whether, although not approved concerning doctrine, they can rightly be judged suitable in the competition, considering rather other qualities. Canonists, citing the text of the Council of Trent, session 24, chapter 18, concerning minors, which states: "After the examination has been completed, those who have been judged suitable by these [Examiners] in terms of age, morals, doctrine, prudence, and other things necessary to govern the vacant parish," unanimously teach that the judgment of the Examiners should not be based solely on doctrine, but should also extend to other prerogatives necessary for governing the parish. Hence, Barbosa, in his *Collectanea* on the Council of Trent, session 24, chapter 18, number 118, writes: "In the competition for parishes, not only the suitability with respect to knowledge should be considered, but also with respect to age, morals, prudence, and the like, for governing the parish," as Massobrius, etc., point out. And Benedict XIV, in his Constitution *Cum Illud*, prescribes: "Having considered these, namely doctrine and other requirements, together, the Examiners, by votes, shall reject the unsuitable and shall report the suitable to the Bishop." But in our case, it must be more carefully investigated whether the other qualities can compensate for the lack of knowledge, so that someone who is scarcely suitable concerning doctrine, but considering rather other qualities, can be judged suitable.

(1) Since, in our case, the judgment of expertise or knowledge is not that which absorbs the other qualities; but rather, conversely, the judgment of the other qualities is that which absorbs expertise and knowledge (considering rather other qualities, the Examiners judge that they are suitable), it is at least permissible to doubt whether this judgment of the Examiners, based on (1) See Volume VII, pages 340 and 467, to understand what indication should be given regarding the expertise or knowledge of the candidates. Also recall Volume XI, page 131, note at the bottom, and Volume XIII, page 119; where it is stated that the Examiners must give a cumulative

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judgment regarding the knowledge and other qualities of the candidates.

[*Latin ed. p. 366*]

366. Concerning this matter, a reasonable judgment has been demonstrated. Especially because, as we shall see later, the other qualities in the priest Ferdinand are either entirely lacking or certainly not such that they can compensate for a lack of expertise or knowledge. In order that the Consultant might be refuted, the Examiners recalled Ferdinand's writings, claiming that they had not correctly judged his expertise. Regarding the solution to the first case, he stated: "Setting aside grammatical errors, I confess that I have often examined the case and the solution, in order to ascertain, if possible, Ferdinand's reasoning; and after a long consideration, it appears to me that if he says anything in the solution, he expresses the opinion that the Sacrament of Extreme Unction, when received, is necessary for attaining eternal salvation." How far this is from the truth, no one can deny; yet, one Examiner gave 8 votes in favor of this solution, another 6, and a third 6! In order that the irrationality of the Examiners' judgment may be better understood, the same case was considered, as it was written and resolved by the priest who was examined in the same gathering, but for another parish. The Consultant asserted that this solution was not only written in good Latin, but also that it adhered to the truth. Nevertheless, the Examiners rendered such a different judgment, that the first assigned 4 votes to this other participant, the second likewise 4, and the third 2. And thus, in total, the priest Ferdinand obtained 20 votes for the solution to this first case, while the priest Philip obtained 10. I refrain from detailing the other two cases presented with their respective solutions; I simply state that a similar difference is found in the Examiners' judgment, as appears from the votes or points assigned to each participant; this difference is especially evident if one considers the votes assigned to one and the other participant concerning the concion. For if the concion of the priest Philip is not entirely perfect, the concion of the priest Ferdinand is truly horrible, lacking sense, lacking language, lacking grammar.

[*Latin ed. p. 367*]

CONCURSUS 367, without ideas, without concepts, and in some part even contrary to the literal meaning of the Gospel. However, the Examiners found a difference in favor of the priest Philip, concerning only one matter. I do not, however, wish to dwell further on this matter, since in our case the question is not about the doctrinal merit of Ferdinand in relation to the doctrinal merit of another priest, because they competed not for the same, but for a different, parish position. I only wished to establish this comparison, so that even from this, the irrationality of the Examiners' judgment, concerning the doctrine of the priest Ferdinand, would become apparent. But in my opinion, the Examiners' judgment is irrational not only

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comparatively, but also absolutely considered. That it is so concerning the solution of the first case, from what has already been said, is quite and abundantly clear. Regarding the other solutions, it is generally observed that Ferdinand presented only some general theories, and says very little or nothing about the practical solution of cases. In the solution of the second case, concerning the doctrine of the parish priest, about which the question is asked, Ferdinand responded that the parish priest was not teaching well, saying that he taught that faith alone is sufficient to attain eternal salvation, and that external worship and even the Sacrifice of the Mass are not necessary. But it does not even seem that the doctrine of the parish priest is heretical; and therefore, because of the bad administration of the Sacraments, and because of the heresies which he expressly teaches, the parish priest would not only be to be disapproved, but completely removed from office. The solution of the third case also says nothing or very little that is relevant, and does not at all determine what must be practically done. Therefore, considering the three solutions, the priest Ferdinand deserved not to be approved, but completely disapproved, because he is lacking that doctrine which is necessary to govern a parish of the first order. The same must be said if one considers the manner in which he wrote the essay. What, then, is the expertise of the priest Ferdinand? This is apparent not only from the competition, but also from what the Bishop reported about him, saying: "He was an ordinary confessor."

[*Latin ed. p. 368*]

368. The assembled Nuns, in a letter written to the Bishop himself on September 22, 1867, inquired whether they might hear the confession of one of their number, who had a private confessional, but on one or two occasions, they requested to confess to the Bishop himself. And before the Bishop responded, they had already decided that they could not hear her, because that nun was not from their own monastery! Similarly, on May 16, 1868, they presented another question, and since one of the Nuns was infirm and needed to request permission from the Apostolic See to leave the enclosure, the community of Nuns had sworn an oath to the Bishop regarding the truth of her infirmity, and for this reason, the priest Ferdinand was threatening the Nuns with excommunication for attempting to violate the enclosure; therefore, before the Bishop responded, he deprived them of confession and the Sacrament of the Eucharist. Furthermore, the Bishop continues to recount that the Nuns wrote to him on the days of June 25, July 24, and August 29, 1869; that the priest Ferdinand, in his dealings with them, behaved so confusedly and contradictorily that they did not know what to do; for they said that the word which today brings death to the soul, tomorrow has attached to it a plenary indulgence. In the second letter, the Nuns recount that he imposed public penances for sins heard in confession, and he imposed a penance on one of the Nuns of walking

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barefoot for eight days! Therefore, whether one considers the writings that the priest Ferdinand wrote in the assembly, or the manner in which he behaved in practice, it is clear that he lacked the necessary knowledge to govern a parish of the first order, and therefore, I reiterate, that he deserved to be entirely disapproved of, not merely disapproved of, in this regard. Therefore, assuming that the judgment of the Examiners in this matter was unreasonable, we must return to their account, so that we may consider it, as it relates to the requests of the applicant, which, in the opinion of the Examiners, are of such a nature and of such importance that they can compensate for the applicant's lack of knowledge; rather, considering other qualities, we judge him to be suitable.

[*Latin ed. p. 369*]

CONCURSUS 369. And first, it must be remembered what I stated above, namely, that although, in a case of candidacy, other requirements of the candidate, besides knowledge, may be considered, nevertheless, if there is in the candidate such and so great a deficiency in knowledge, that with regard to doctrine he does not deserve to be approved, the other requirements cannot compensate for this deficiency. It has been demonstrated that the priest Ferdinand entirely lacks the knowledge necessary to govern a parish; therefore, in the case under consideration, the other qualities cannot compensate for the lack of knowledge, and consequently, if the judgment of the Examiners was unreasonable with regard to knowledge, it is necessary that it be unreasonable also in this respect. But further, where are these other qualities of the priest Ferdinand? The Examiners say that he is of moderate morals and endowed with some prudence; with these words, it seems to me, the Examiners themselves sufficiently indicate that something remains to be desired with regard to prudence, being "endowed with some prudence." And indeed, this is sufficiently evident from the aforementioned report of the Reverend Bishop. And truly, the priest Ferdinand demonstrates that he is not endowed with prudence, when he sought subscriptions to have himself appointed as economist, while the Archpriest of the parish was still alive. He was not prudent when he promised to wicked priests, who had been justly suspended by the Ordinary, that he would work to obtain their rehabilitation, if he obtained the Archpriestship. He was not prudent when, being the ordinary confessor of a monastery of eleven nuns, he divided this small community in such a way that they rose up against each other, due to his indiscreet and imprudent direction, and yet, as the Visitor sent by the Bishop says, he sought in all ways to be confirmed in his position as confessor. He acted contrary to the dispositions of the sacred canons, without authority, in directing the nuns, and for this reason he was severely reprimanded by the Bishop. Furthermore, it is also evident that he does not conduct himself with sufficient caution with regard to morality, from the fact that he lives with his nephew who is

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living in concubinage, and he allows the nephew's concubine to live with him.

[*Latin ed. p. 370*]

370. The competition [for the benefice] is fueled by ambition, which leads some to live a life of concubinage, and in order to meet these expenses, they contract many debts, which they are unable to satisfy. "It is clear," said the Consultant, "that Ferdinand is entirely lacking in the qualities for which he was declared suitable by the Examiners." Regarding this matter, even if he were to be considered worthy through the hypothesis of doctrine, he must nevertheless be rejected due to the lack of other qualities. Hence, the Consultant concluded, stating: "The Examiners are entirely to blame for the grave duty they performed, since they renounced a priest lacking in doctrine and other qualities, declaring him suitable." And therefore, their judgment was entirely unreasonable in every respect; the priest, even if he were the only one to participate in the competition, acquired no right to obtain the benefice, and the competition itself suffers from the vice of nullity. With these premises established, the proposed questions were: I. Does it appear that the Examiners acted improperly in this case? And, to the extent that the answer is affirmative, II. Should a new competition be held, or rather, should the Archpriestship be awarded to the priest Ferdinand in this case?

RESOLUTION. The Sacred Congregation [for the Propagation of the Faith], on the 9th of September, 1882, responded: To I. Affirmative, and furthermore. To II. Let a new competition be held before other Examiners.

FROM WHICH WE MAY GATHER: I. That it is the sole judgment of the Bishop to decide who is worthy to be declared the most suitable among the approved candidates; thus, it is permissible for him, in part, to revise the judgment of the Examiners, declaring someone worthy, even if they themselves had declared him only to be worthy or suitable.

[*Latin ed. p. 371*]

SECTION 371 II. Therefore, based on this jurisprudence, it must be said, by way of clarification, that in the case of a concurrence, the act of collation is not perfected, but rather is merely prepared and arranged.

III. Consequently, none of the concurring parties acquires any right to obtain the benefice through the favorable judgment of the examiners; otherwise, the election and renunciation of the more worthy candidate among the approved candidates would not be left solely to the judgment of the Bishop.

IV. Although, in the case where only one person is concurring, greater reasons are required to exclude him, nevertheless, the concurring party does not acquire a certain right; so that the Bishop may be compelled to grant the institution: because the entire substance of the act of collation re-

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mains subject to the judgment of the parish and the episcopal jurisdiction.

V. According to the Council of Trent, Session 24, chapter 18, those who, after a prior and cumulative judgment, have been deemed suitable by age, morals, doctrine, prudence, and other qualities for governing the vacant church, must renounce.

VI. In the case of the priest Ferdinand, he offered almost nothing to support this cumulative judgment; indeed, the knowledge he possessed, which was a negative quantity, could in no way be added to the other qualities, unknown to anyone, except to the lynx-eyed examiners.

VII. Hence, the Sacred Congregation [Consilium] which, with different eyes, examined Ferdinand's knowledge and qualities, considered the examiners' report to be flawed, and ordered a new concurrence to be held before other examiners.

(1) The Bishop is in no way to be blamed in the case under consideration if he indefinitely delayed granting the institution. However, he is not exempt from fault for having admitted Ferdinand to the concurrence, whose expertise and qualifications should have been evident to him. To exclude a concurring party, a regular process is not required, but rather certain facts must be present that are detrimental to the concurring party's good reputation. See note 2, Volume VII, page 351, *Historia Ecclesiastica*.

(2) Garzias de Beneficiis, part 4, chapter 7, paragraph 82, states: "The Lords [Judges of the Sacred Roman Rota] have gone further in this matter, that the collation of parish priests, even today, is not necessary, because it is entirely based on the mere will of the Bishop, who can abstain from it and allow the right to revert to the Superior over time, nor can he be compelled to do so by any other means."

[*Latin ed. p. 372*]

372 FROM THE HOLY CONGREGATION (A Decree whereby Indulgence of one hundred days is granted to Priests who recite the following prayer.) On February 17, 1883, Most Blessed Father Maria Bernard, Abbot of Lérins, and Vicar of the Congregation of Senanque, prostrate at the feet of His Holiness, requests that both secular and regular priests, reciting the following prayer before Mass, which is attached to Our Pious Sodality: "O Mother of piety and mercy, Most Blessed Virgin Mary, I, a miserable and unworthy sinner, flee to you with all my heart and affection, and I implore your mercy; that just as you stood by your most beloved Son, hanging on the cross, so may you deign to assist me, a miserable sinner, and the priests who offer themselves here and now to the whole holy Church, that, aided by your grace, we may be able to offer a worthy and acceptable sacrifice in the sight of the most Holy and undivided Trinity. Amen. – and may they gain the Indulgence of one hundred days. And God, etc. The Most Holy Lord Pope Leo XIII, in an audience held on February 17, 1883, by

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the aforementioned Secretary of the Holy Congregation, Prefect of Indulgences and Sacred Relics, benignly granted that, namely, all priests, both secular and regular, who, with at least a contrite heart, devoutly recite the aforementioned prayer before the celebration of Mass, may gain the Indulgence of one hundred days. This is valid forever, without any brief being required, notwithstanding anything to the contrary. Given in Rome, from the Secretariat of the same Holy Congregation, on February 17, 1883. A. L. CARD. OREGLIA As. STEPH. PRAEF. F. DellaVolpe Secret.

[*Latin ed. p. 373*]

373 GAP. Die 28 Iulii 1882. DECREE, BY WHICH IT IS DECLARED THAT NO INDULGENCES ARE GRANTED BY THE FATHER BLANCHARD HEREAFTER MENTIONED. A certain priest, born in the diocese of Gap in France, named John Francis Blanchard, formerly of the Order of the Most Blessed Virgin, claims, by a supposed living oracle, to have received from Pope Pius IX the power to grant indulgences for his own benefit. These indulgences are either plenary or partial, and can be applied to the souls detained in Purgatory, or not, according to his own discretion. To obtain such indulgences, he usually prescribes the following conditions: to kiss or gaze upon the image of the Crucifix of Christ, or upon medals blessed by him; which can be done a hundred times, for example, in one hour, and as many times as plenary indulgences are obtained. He requires neither confession nor Communion, nor any prayers for the Church, nor any prayers made with the intention of the Supreme Pontiff, as is customary. Because of this, the Bishop of Gap appealed to the Sacred Congregation, so that it might deign to teach and provide an answer in this matter, and to respond to the following questions: 1. Can it be admitted that such a power, to grant indulgences to the faithful, has been granted to a private priest, by a supposed living oracle, as the aforementioned priest, John Francis Blanchard, boasts? 2. If such ample power has been granted to a priest, is it entirely permissible for him to use it everywhere for the benefit of the faithful, without consulting the Sacred Congregation for Indulgences, and without consulting, indeed, against the will and objections of the local Ordinaries? The Sacred Congregation, to which the matters of Indulgences and Sacred Relics are entrusted, judged as follows:

[*Latin ed. p. 374*]

374. Regarding both negative cases: Let the Bishop take care, in the best way possible, to ensure that the aforementioned Priest ceases to exercise the power granted to him of granting Indulgences, concerning which, so that the faithful are not led into error for a long time, in this case. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on the 28th of July, 1882. AL. CARD. OREGLIA, Prefect. From the Most Reverend, STEPHEN. F. Della Volpe, Secretary.

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FROM THE SACRED CONGREGATION FOR RITES: Response concerning primary feasts, etc., if they coincide with secondary feasts of the Lord's Passion. The Most Reverend Lord Isidoras Du Rousseaux, Bishop of Tournay, requested a resolution from the Sacred Congregation for Rites regarding the following doubt: Whether primary feasts of the higher rite should be preferred, in the case of a coincidence, with secondary feasts of the Lord's Passion, which are also of the higher rite? And the aforementioned Sacred Congregation, after hearing the opinion of another from the Masters of the Apostolic Ceremonies, decided to respond as follows: Negatively, according to the Decrees concerning coincidences, in Palermo on the 12th of April, 1823, in Mechlin on the 22nd of May, 1841, and in Malta on the 6th of September, 1845. And thus it responded and declared, on the 25th of September, 1882.

For the Eminent and Most Reverend Lord DOMINIC CARDINAL BARTOLLINI, Prefect.

CAMILLUS CARDINAL DI PIETRO, Bishop of Ostia and Velletri.

LAURENTIUS SALVATI, Secretary.

[*Latin ed. p. 375*]

375 APPENDIX V. A Very Brief Commentary on the Instruction Issued by the Sacred Congregation of Bishops and Regular Canons on June 11, 1880 (1). Not once, nor even in a single Diocese, have we been requested to add a commentary to the aforementioned instruction, which sets forth the most important procedures to be followed; rather, it seemed more useful and economical to provide instructions to ecclesiastical courts regarding the manner in which to proceed economically in disciplinary and criminal cases involving clerics, in order to preserve justice and proper judgment. We have therefore undertaken this task, diligently striving to ensure that the courts, in their application of these provisions, maintain the canonical regularity and uniformity that are essential. We will not delay in addressing the matters contained in the first, second, and third articles. Indeed, no Ordinary should fail to understand that the proper correction of discipline is a weighty matter entrusted to him. We will, for the sake of brevity, limit ourselves to a few essential points, lest we appear to fall short of what is required. We will not dwell on the purpose of the instruction, which is evident from the preface. The urgent and grave burden placed upon the clergy, who are under the authority of their superiors, is to ensure that disturbances to order are eliminated as easily as possible, at the appropriate time. The Sacred Congregation, in its wisdom, has established two types of remedies for these evils, both of which are designed to be applied in certain circumstances, as appropriate, either to prevent the evil from taking root, or to expiate the offense; in such a way, however, that the parties involved may be reconciled and return to a good life, and that the consequences of their actions may be repaired. (1) You will find this Instruction in Volume

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XIII, page 324, paragraph.

[*Latin ed. p. 376*]

376 APPENDIX To be avoided, three things are proposed: 1. spiritual exercises, 2. admonitions, 3. precepts. Regarding admonitions and precepts, some are added in the following articles; this is not the case for spiritual exercises. It is already known to all that the spiritual exercises which were imposed by the Constitution 126 of the Supreme Pontiff Alexander VII, which begins with the words "Apostolica Sollicitudo," and also by the letter of the Sacred Congregation of Bishops and Regulars, ordered by the blessed memory of Innocent XI, published on October 9, 1682, were imposed upon all those who desired to take on a religious habit, or to make a religious profession, or to enter the sacred and even minor Orders; and by another letter of the same Sacred Congregation, dated February 1, 1710, by order of the Supreme Pontiff Clement X, they were most strongly recommended to the Ordinaries of Italy and the adjacent islands "so that," as the fruit, which is certainly very abundant, from the aforementioned spiritual exercises, when properly proposed and explained, all those of the clergy subject to them, but especially the Rectors of souls, confessors, canons, and other beneficed persons, those attached to the service of the choir, may be diligently encouraged to perform these exercises, at least once a year, in the houses of the Religious Society of Jesus, or of the Congregation of the Mission, if they are present; but if not, in any other pious or Regular house designated and approved for this purpose by the Ordinaries themselves. In the same letter, the purpose of this work is described, namely: "Since long experience has shown that it greatly contributes to maintaining and preserving the dignity and sanctity of ecclesiastical men that they should sometimes devote themselves to spiritual exercises, by which whatever sordid thing has been contracted from the world is conveniently cleansed, the ecclesiastical spirit is restored, the keenness of the mind is raised up for the contemplation of divine things, and the rule or standard of right and holy conduct is established or confirmed; therefore, Holiness, with the outstanding zeal for the salvation of all, earnestly desires that this pious and salutary work of spiritual exercises be frequently practiced everywhere, and vigorously exhorts and encourages all the Patriarchs, Archbishops, Bishops, and other Ordinaries, both of Italy and of the adjacent islands, to strive to promote it in their respective dioceses, to the greatest extent possible." But, besides the aforementioned reason and the cited letter of the Sacred Congregation of Bishops and Regulars, spiritual exercises are introduced in the instruction which we are discussing. Indeed, in the letter of February 1, 1710, the exercises for Italy:

[*Latin ed. p. 377*]

To the bishops, it was most earnestly recommended that, by means of

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each and every member of the clergy, whatever things, occasions, and proximate causes for wrongdoing are removed. While the ecclesiastical spirit is restored, as it were, after being soiled by worldly dust, it can, and indeed ought, to be common to those who lead a more perfect life. Therefore, some remedy must exist: for if nothing is present, nothing can be applied, and no action can be taken to remove the danger of evil. But such a remedy must be of a nature that either it mitigates guilt, even with spiritual exercises, or, even if it does not contain guilt itself, it nevertheless provides a means to avoid it closely, and it should be presented opportunely, even if its internal purpose always remains the same. Such voluntary occasions and other causes for wrongdoing are well known. Indeed, acts of correction are sometimes imposed, which, although they may not yet involve guilt in some, nevertheless follow a certain order, and are presented to the eyes of those who are being corrected, sometimes in one way, sometimes in another, and even after corrections, they are imposed frequently: they offer a proximate, moral, or even scandalous remedy. Furthermore, it must be the case that such an act is made known, so that, in that case, a penalty, even if slight, may be externally evident. Regarding the application of such preventative remedies, it is requested that nothing be omitted, as stated in article IX of the new instruction, which declares: "Extrajudicial remedies are to be applied to those offenses which are hidden." And regarding this remedy, sufficient has been said in Appendix I, Volume XIV, page 299. Therefore, the Ordinaries are instructed, in article V, to obtain a summary knowledge of the facts, in order that, if it should be necessary to proceed further, or if a scandal should arise, they may bring the matter to the attention of the superior authority, so that they may have the proofs of the facts at hand, and be able to transmit them to the superior.

[*Latin ed. p. 378*]

378 APPENDIX. The following question arises concerning the second of the proposed questions: namely, under what circumstances may precautionary measures be employed? This question is then transferred to another: "What is the summary knowledge of the facts that the Ordinary must possess before applying precautionary measures?" Two types of evidence are known in law: full evidence, and partial evidence. The author Ferraris, in the word "evidence," number 4, states: "Full evidence is that which creates such confidence that it is sufficient to resolve disputes; such as evidence given by two witnesses, both of full age, by authentic documents, by a confession made by the person themselves, and the like." Partial evidence is that which creates some degree of confidence in the matter in question, but not enough to resolve disputes; such as evidence given by one witness, by a confession made outside of court, by a private document, by the flight of someone who should have responded, by presumption, and the like. Thus, in matters of common concern. And further, under number

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13, the same author states: "However, there are more cases in which full evidence is not required, but partial evidence, or other evidence derived from conjecture, is sufficient; such as cases in which a judgment already rendered creates a slight prejudice." *Mota recentior*, part 3, decision 466, V, under number 4, part 4, and the Doctors commonly state in I. 3 §. "therefore, the Divine [author] *ff. de testibus c. u in nostra* 'de testibus'." Finally, under number 19, he adds: "Partial evidence is sufficient in summary cases where the matter in hand is trivial and of no great prejudice." *Rota*, part 15, decision 190, number 14, by text in C. u, from the letters "de iri integrum restituí" C. u cum Bertoldus "18 de sententi et reiudicat. etc." With these principles of law established, the question is again raised: "Is full evidence required, or is partial evidence sufficient, in order to employ precautionary measures?" We must pay the greatest attention to the circumstances of the case and the person involved. More stringent evidence is required for more serious matters, and less stringent evidence for less serious matters; more stringent evidence if the person involved is of age, of good character, and has not yet been subject to any fault; less stringent evidence if the accused has already shown himself to be of a frivolous nature. Indeed, before precautionary measures can be applied, at least partial evidence must exist. However, since this aspect of evidence is of great importance, we will provide more detailed information, as much as possible within the limits of this commentary, regarding how to obtain a summary knowledge of the facts, as mentioned in this article by the Holy Congregation.

[*Latin ed. p. 379*]

It concerns the canonical remedies for correcting or judging, by applying the extrajudicial form, in order to encourage someone to return to the path of virtue, or to avoid the imminent danger, or to remove scandal, whether through rumor, or through a secret or even anonymous denunciation. Therefore, the Bishop must diligently inquire into the existence and nature of the fault, which in law is called the process of inquiring into matters concerning Bishops. According to the precept of the Pope, the Inquisitor, or the Promoter Fiscalis, sometimes in this manner, or through a rumor, or through a denunciation, informs the Bishop of a fault, or of the neglect of precepts imposed upon the clergy. Frequently, this comes to the attention of the Bishops of Spain during the course of a visitation. Then, before judgment, the Bishop, according to canon 2, question 1, in his considerations, first inquires, so that, with due diligence, no false accusation is made, and only after judgment does he proceed with justice. He is bound to judge a just suspicion, and if a notorious (that is, well-known) fact is proven, he is obliged to proceed. For this kind of general inquiry, the method to be followed is taught by Prax. Vic. n. 73, where Pellegrin says: "The Bishop summons those who are present, and it is to be omitted; for it can happen that, after a diligent investigation, the matter,

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the dependence, or the false accusations, or those things which are said, are very different from what was said." But the process of inquiry, by canonical words, applied to extrajudicial matters, itself emerges, so that, by its very example, it may know how to punish the offense, and, knowing the fact, it excites the accused to open the way, and, through appropriate means and questions, it seeks to know the circumstances, and especially who committed the act. The accused is not required to confess, as it is customary to use secret means, so that, if he says that he does not know, he is questioned again in general, whether he knows at least that such a thing exists. If someone, for the purpose of establishing the truth for the Court, institutes an internal investigation, it will provide such information and statements: the investigation of which we are speaking concerns criminal matters and someone of such a fault or suspicion, and he responds, denying it.

[*Latin ed. p. 380*]

380 APPENDIX V. tive, he is questioned again whether he knows who might know everything. And thus he can proceed with others. If, from the general inquiry preceding, prudence recommends it, and if he is not subject to the affections of study or hatred towards the deliquent, then, as Van Espen states (loc. cit., p. 25), and in the work by a certain person, whose title is *Praxis rerum criminalium*, indices (evidence) are accumulated (on this matter, see chapter 8, numbers 1 and 2). It must be noted, secondly, that the judgment of the Bishop, whether it be light or grave, is given to inform him. Thirdly, it must be taken care that the inquiry does not begin to spread among the populace. The testimonies of witnesses are presented individually, then written information and other similar matters are given (Van Espen, *Ius Eccles. univers.*, part 3, title 8, chapter 1, number 37). It is also to be noted that the criteria by which Bishops act in this matter are: the opinion of Doctors, the judgments, and established rules. Van Espen leaves to the Doctors the matter of secret probation, but he states that in the case where the application of *remedii* is made to a Superior, the entire judgment of the Judge, whether it concerns the person or the quality of the delict and the evidence, must be presented to the Curia, so that it may proceed further. It is necessary to take into account the judgment to be given, and whether the evidence is sufficient to inform the person. It is clear that the work is not done by a general inquiry, but rather when, together with evidence of guilt, or of imminent danger, or of existing scandal, it is prudent for the Bishop to proceed directly to the inquiry which they call a special inquiry, namely, that in which the accusation against the person is questioned. In order to properly complete both the general and the special inquiry, it is necessary to expand on the common opinions against him, to ascertain the origin of the information, and to identify the witnesses. This can also be done by a prudent ecclesiastical man, to whom the Bishop has entrusted the task of preserving the reputation. Firstly, it must be ascer-

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tained whether it originates from the Ordinary himself; or, if it is from an ecclesiastical man, an inquiry must be made. If, by his probity and integrity, he refutes the accusation; then nothing further need be done. No penalty is imposed.

[*Latin ed. p. 381*]

ix. In the same manner, proceedings must be conducted with those who promise to cease [their offense] and to repair the harm; indeed, they are compelled to fulfill their promises under penalty of suspension, etc., so that they may devote themselves to spiritual exercises within some religious family, and this must be carried out. But if indications of such a nature are found, namely, more serious spiritual exercises that constitute a complete probation, in no way should the nature of the penalty be altered; the delinquent must be summoned to appear before the Bishop (among which, a refusal to appear before the Bishop, as has been said above in the Admonitions, because it pertains to the form of the extrajudicial process of the same confession), canonical admonitions are multiplied, not further, but are to be carried out either in the form of a letter or through an intermediary person, or in a legal form: and it is understood that the response is given promptly. Thus, however, it must be clear from some act that the admonitions have been carried out, whether by applying them paternally and secretly (even through canonical admonitions), or in a legal form, whether by letter or through an intermediary person, or in a legal form. Therefore, it makes no difference whether one or the other method is chosen, provided that it is clear from some act that the admonitions have truly taken place. Therefore, if a letter is used, it must be sent in such a way that it is clear from some act that the admonitions have been carried out. Following this, section XV, namely, concerning the office of the notaries, who, by ascertaining the truth of the presentation, the reception, or the repudiation, if the warning is given to the delinquent by an intermediary person, the Ordinary begins, and a precept is issued, "Therefore, the precept is only to be applied after warnings have been given, etc." Indeed, it is certainly a very serious precept, and it must be applied only to those of the clergy who excel in sanctity, age, and doctrine, and who are superior to others in gravity, and their written testimony regarding the warning, whether it is given in a paternal form or in a legal form, will be presented. And since, in the execution of the precept, the delinquent will often vindicate his innocence, full faith must be given. Finally, if it is necessary to proceed in a legal form, and no impediment exists on the part of the authorities, this...

[*Latin ed. p. 382*]

382 APPENDIX: It is fitting, if the officials of the Curia have their own warnings communicated through the means of communication. And the

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warning, as mentioned above, but also the interdict, are notified to the official and feared in the communication. If the official is unable to comply, it is necessary to ensure that he does not evade [punishment] through suspension, but that he fulfills what has been commanded from the beginning, as is prescribed in the aforementioned article concerning appeals, and in Chapter XIV.

Concerning the fact that warnings may prove fruitless, the Curia, according to the analogy of the law, [must] order that the delinquent be given a warning, in which it is declared what he must do, and thus, by means of ecclesiastical penalties, the transgression is punished.

All of this, in three instances, must allow at least a space of six days: two days for the first warning, with a deadline for action, and four days for the second warning, with a deadline for action, as is prescribed in the aforementioned article concerning excommunication. The Bishop applies the decree issued by the Curia, as described in this article. It is necessary to state that the warnings, even when given in a legal form and entrusted to the official for execution, always contain something paternal; they are expressed in the form of a command. Therefore, the Ordinary does not exempt the person from the warnings. But when warnings are to precede a command (not the other way around), it is permissible, according to canon law, to use an extrajudicial form, and often even a secret form, to communicate to the delinquent what he must do or from what he must abstain, declaring this within a period of six days, which is two days for the first warning and four days for the second warning, as is taught in the practice concerning appeals, Chapter XIV, number 244, Part I and following.

The third warning, which is required before someone can be excommunicated, is a spontaneous act, obtained in three instances, as is stated in Chapter 6.

The purpose of the three warnings is to ensure that the delinquent repents and makes amends; therefore, a command is issued, and the matter proceeds to the tribunal.

After the warnings follow the ecclesiastical penalties, which are threatened to the delinquent, and which he incurs if he transgresses the command.

Therefore, there are three essential elements:

1. The warning, as mentioned above, but also the interdict.

2. The communication of the warning to the official.

3. The declaration of what the delinquent must do or from what he must abstain, within a period of six days.

[*Latin ed. p. 383*]

I. Concerning the precept, we have: 1. A preliminary warning; 2. An explicit statement of what must be done, or from what one must abstain; 3.

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Charity and prudence, which the Church is accustomed to employ in her actions, especially in order to avoid scandal; 4. A penal sanction to prevent the spread of wrongdoing among the people. This penal sanction must be adapted to the gravity of the offense. We speak of minor offenses, for which spiritual exercises (as we have said) and judicial remedies are suitable for correction. For more serious offenses, suspension from ecclesiastical functions and other similar penalties are most often applied through judicial proceedings. The warning mentioned in Article IX is self-evident. The instructions for economic matters, and the rules of conduct prescribed in Article VIII, apply only to those concerned. The notification of the precept is entrusted to the Chancellor, and not to another; or, in cases where it is impossible or imprudent to do so, to the Curia, or before the Vicar General, in the presence of two witnesses of proven integrity, or, if the accused prefers, in his presence, and it is subscribed as far as he is willing. The formalities of judgment remain firm, as prescribed by the sacred Canons and Apostolic Constitutions, for matters of gravity. Also, for hidden crimes, there is an extraordinary remedy through informed conscience, as is entirely stated in Chapter I, Session V, of the Council of Trent, concerning Reform, number 14, so that the notification of the precept is not revoked. Regarding the remedies for preventing wrongdoing, the validity of the present subscription is not an impediment to the proceedings, provided that the act exists and the prescribed formalities are observed. The solemn processes and legal formalities are not required in cases where it is necessary to act with haste to prevent a crime, as is entirely stated in Article X concerning the manner of proceeding. In these cases, it may sometimes happen that the Vicar General requires the accused to take an oath to maintain secrecy, which is entirely appropriate, given the nature of the crime. 2. For the transgression of the precept; 3. For crimes committed against witnesses; 4. For open violation of the laws of the Holy Church.

[*Latin ed. p. 384*]

384 APPENDIX V. This instruction intends that the fundamental principles of justice be upheld, and that the process be conducted swiftly and without unnecessary delay, even in cases where malice is present, concerning elections, petitions, provisions, dignities, persons, offices, canonries, benefices, ecclesiastical holdings, tithes, marriages, and usury.

It is permissible to proceed summarily, if the matters involve marriages and usury, and to reach a judgment in due form when necessary.

Furthermore, admonitions and injunctions issued by a judge may be swiftly enforced against those who disregard them.

The following articles, from XI onwards, describe the order of proceedings, which, using legal terminology, is called the "ordinary" course, and also the "summary" course, which pertains to causes of lesser importance, and which are intended to expedite the establishment of judgments. From

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this description of the order of proceedings, it is clear that this "ordinary" method of proceeding differs greatly from the procedures known in canon law.

The process *ex officio* originates, as noted, from the Clementine Code (Often cited, Cap. 2, concerning the first motion, and because it does not befit the judge to accuse the accused, but the accuser does so). (Cap. 2 of the Clementine Code, concerning judgments).

Summary judgments should not be confused with criminal proceedings, as the Promoter Fiscalis, whose presence in each case is required by law, as noted below in Article XIII, and the Curia, by necessity, provides investigation and other means. The summary process, as mentioned in Articles V and VIII, is intended to expedite the execution of a mandate.

A delegate appointed by the Pope may also be assigned to expedite the conclusion of a case.

[*Latin ed. p. 385*]

Six. The process against the accused takes place when someone has declared himself the plaintiff, and the process summons the accused to appear before the court to answer for the matter; that is, when the procedure for conducting the process is initiated ex officio. However, once begun, it must be carried through to its conclusion, just as with any other action. The same applies to the precautions and prudence that must be taken to protect the truth. In such proceedings, the knowledge of the truth is sought, and if the accused, through diligent questioning, confesses to the matter, then all subsequent actions must be carried out regularly, as they should be. It often happens, however, that the end is not reached through comparison of evidence, as is customary, so that the forms and procedures given to the Bishops are made, and all that has been done is cultivated, as if it were not to be done. The process, from the knowledge that is necessary for the court, is attended by an Ecclesiastical Actuary. It is especially instituted to ascertain the probity and suitability of the person, and if it is known that a crime has been committed, it must be reported to the court. The "notorium facti," according to Schmalzgrueber's Decretal, is at least six in number, because, as it is said, it is a very important matter for the people to inquire into the actions of others, not only to know what has been done, but also to know the integrity and reputation of those who have done it. The Actuary must stand for this "notorium facti." Whenever this "notorium facti" is presented, a larger part of the people is required, as Bouix says in his "De Iudiciis," Vol. I, part. 1, section 15, paragraph 3. An Actuary, or a Cancellarius, is the same thing, or at least ten men must be present to form the "notorium facti," so that those who are present can give their opinion as to what should be done. It is customary for the author to be present, and also for Canons to be present, because the terms Actuary and Cancellarius are often used as synonyms. The Actuary and the Cancellarius are persons

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who take on the role of the plaintiff or accuser, and they do not have any other office, just as the "promotor fiscalis" does. They are also sometimes confused with Notaries, who are also called Masters.

[*Latin ed. p. 386*]

386 APPENDIX actorum, because judicial acts and proceedings are recorded and confirmed by them. (Leurenius For. Eccles., in title 22, book 2, decree 9,687). The same is stated by Cardinal De Luca (de iudiciis disc.-5 no. I.). Setting aside the particular customs of places concerning the manner of interpreting these words, it seems that a distinction exists between notaries, and actuaries or registrars, and that this distinction pertains to their species and their genus. For, according to the more ordinary usage of speech, the term "actuary" appears to refer not only to one who can write acts that give public faith, but also to one who has actually been appointed to write such acts in a particular court or registry. He who has been created a notary, but has not yet been appointed to exercise his office in a particular court or registry, retains the name of notary, but, according to the more accepted usage, is not called an actuary or registrar; lest he be confused with another who has actually been appointed, and is attached to a different court or registry. But whatever may be the case regarding the distinctions indicated by us, two things are certain: first, concerning the understanding of such words, one must adhere to the customs of the places; second, a legitimately constituted actuary and registrar, at least with regard to the acts of the court to which they are attached, has the authority of the registry of notaries. Therefore, in the process of a trial, the presence of an actuary is required, and it is also necessary for the assessment of the registrar to be present; it must be understood that the name of "Cancellarius" is commonly used to denote an "Actuarius," and vice versa.

Article XIII. This article imposes upon each court the obligation of appointing a "Fiscal" (who is called a "Fiscal"), a defender of the state and of the law, also a procurator and advocate for justice. His office is described by Pellegrinus de Vicario Gener. Episcopi, part 4, section 1, no. 19. The Fiscal of the episcopal court has the duty of assisting the general vicar, of upholding the rights of the Church, and of prosecuting and defending legal matters in which public money or justice are involved. Therefore, he can request that a term be granted for proving a crime; he can request remission, where it is legally due; likewise, he can request that a summons be issued; he can also request that publication be made; he can request that those who are being investigated not be heard, that witnesses be recalled, that the witnesses themselves be questioned; he can request that those who do not appear be declared contumacious, and finally, that the guilty be condemned. He can also intervene in all matters with the judge and give his opinion for the sake of counsel, but he cannot judge. Furthermore, the actions and

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proceedings that are carried out by him in the course of his office are part of the judgment itself.

[*Latin ed. p. 387*]

v. ADDENDUM 387. The essence of justice is affected, and therefore, in its absence, it must be supplied through letters, so that judgment may not be rendered. For it is the duty of the officials to ensure that in every judgment, and especially in those involving essential matters, there are present at least three persons: namely, a judge, an advocate, and the accused. Thus, any doubt concerning the validity of the judgment may be removed. If this requirement of three persons – the judge, the advocate, and the accused – is not observed in legitimate legal proceedings, the judgment is invalid. Furthermore, the Bishop, who acts as judge, ought to take up the cause of the accuser; otherwise, the contumacy of the accused can never be justly declared. If, without these precautions, the accused were declared contumacious in a trial, he would justly and rightfully object to this declaration, and would stand against the judgment, and would appeal against the sentence of the court. "For nullity infects not only those judgments which are instituted by the authority of the court, but all judgments." Thus, the author Pellegrin asserts in the aforementioned passage, section 4, paragraph 1. It is indeed so necessary in criminal cases that the *Fiscalis curiae* (prosecutor) be cited in all proceedings against the accused, so that if a sentence is passed against the accused without his being cited, the sentence is null and void. Law 1 of the Code concerning sentences passed against the *fiscalis* provides for an appeal in such cases. Article XV. This article concerns the foundation of the process. For either the process is instituted *ex officio* (by order of the court), or some circumstance or inquiry must precede the facts that are to be examined in the process. Following this are the proofs which confirm the facts: among these are authentic documents, extrajudicial confessions of the accused, testimonies of witnesses, and other matters that should be gathered before the beginning of the process, as we have mentioned above in connection with Article XI. In particular, for the sake of authentic documents, the presence of the parish priest of the accused is necessary in every episcopal court. Article XIV. Whether this necessity exists is clear from the nature of the court itself. If the presence of the parish priest and the vicars of the court are lacking, and if there are only court officials and foreigners present, then in this case their actions are accepted in place of the proper notifications and citations that must be given in accordance with the laws of notification. Or, if these are lacking, and if the case involves a parish priest, then it is sufficient to present the decree of the precept, and also the notification of the action. In the case of *Casus*, it is sufficient to present the decree of the precept, and also the

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notification of the action.

[*Latin ed. p. 388*]

388 APPENDIX V. This can be done in the process, according to articles VII and VIII, for the case. Namely, the act of which we speak in Article XX. And it is not a precept, but rather it is opportune to hear the testimonies of witnesses separately, concerning the transgression of which they are aware, but a process must be instituted. Article XVI. It contains a warning to those who are already subject to hearings, so that they may strive for the correct judgment. Therefore, it must be ensured that the individual legal proof is not based on a false foundation, but rather on external evidence, and that the knowledge of the fact is presented by each witness, composed of elements that clearly establish the truth, as we have taught in Articles V and V concerning the means for the examination of witnesses: before any contrary opinion is given, it is necessary to diligently inquire whether the information is such that it should be considered. Furthermore, it is taught that witnesses must always be diligently examined, according to the following rule: whatever the procedure, the weight of the evidence is only determined by the conscience of each judge. Article XVII. Since everyone, whether through a denunciation, or through an accusation, or by another means, may be ignorant of the principles contained in the Instruction of the Holy See to the Bishops of the States of America, dated June 20, 1878, concerning the examination of witnesses in criminal cases, and concerning the weight of evidence, it is necessary to examine them commonly, as is stated in Practice 4, Section 4, n. 3. Note. The Congregation of Propaganda Fide, in the aforementioned article, reminds us: that in the investigation, with regard to the manner in which witnesses are heard, it is prescribed that they must always be heard separately. Nothing in this article contains an action that would expose them, especially concerning the notification given to them. It is undoubtedly necessary that they be informed, and that proof of the received notification be recorded in the proceedings, so that there is no mention of their refusal, or of any damage, or of any harm caused to them, before the tribunal. Articles XVIII and XIX do not require comment. Article XX. The case of Kosso.

[*Latin ed. p. 389*]

389 IX v. It is observed, and not infrequently in these times, that certain events occur which make those most intimately involved in criminal acts more certain of their impunity. Prudence dictates that, in the case of clerics accused of crimes, steps be taken to summon witnesses who, through imprudence, may have been exposed to the crime, and indeed, in other cases as well, to ascertain the truth. For example, when an accused person approaches the Court, it is given that, if such testimonies were to be presented, those who are opposed to religion would greatly rejoice if the

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accused, when questioned about the accusations, were to respond in such a way as to indicate that the accusations are true, or if circumstances were to arise that would allow them to spread false rumors. Therefore, it is necessary to take great care to find witnesses who can, through their testimony, indicate that the accused must be subjected to examination regarding the matters they have heard. The same principle applies when responding to an accusation; witnesses must be summoned to the Court, even if they have been called previously and have refused to appear, which, unfortunately, happens frequently in these days. Article XXI states that the accused must first be summoned to appear. Those matters which must be included in the summons are explained in Article XXI. Therefore, the accused must be summoned to appear before a judge, and all relevant information must be gathered in a proper manner, so that the accused can be declared guilty or innocent. The accused can be declared guilty if the witnesses exclude the possibility of innocence, and this is done in a secret archive, and the accused will be considered contumacious if he resists the process for a long time. Finally, it can be determined that the accused is contumacious if he dares to disregard this summons, without knowing that he is subject to legitimate impediments. Therefore, the subject of this article is: The summons of the accused through a formal notification, with a deadline for appearance, as described above. (Article XXIII. The Court, without any legitimate impediment, must transmit the accusations to the proper authority. Article XIV) The terms.

[*Latin ed. p. 390*]

390 APPENDIX: What must be declared beforehand. He must be accused. But he can always be accused, even after the deadline, and the Curia can always demand obedience, even in the case of contumacy. The peremptory necessity arises from this, because we are dealing with contumacy. But when it is a question of determining [contumacy], the "fiscal" party must prove the contumacy of the other party, and either the prosecutor must request it, or the judge must order it. Regarding the appropriateness of the preliminary declaration, nothing certain can be established: for it must be according to the distance and circumstances of the contumacious case, so that it may be resolved for the more convenient or less difficult solution. De Luca, in his *Discourses on Justice*, book 10, number 1. Following a legitimate citation, executed according to the mandate of the competent judge, and its legitimate presentation in a timely manner, with all other conditions being met, if the cited party does not appear within the statutory period, he then incurs contumacy, and then, with the rigor of the law, the process can proceed in contumacy, without the necessity of repeating other citations: especially when the first citation is for the entire cause, according to the style currently in use almost everywhere, with a warning to appoint a legitimate procurator who can be found in the area, and with the threat that,

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otherwise, further proceedings will be taken, up to the termination of the judgment and its execution: therefore, other citations, even contradictory ones, are superfluous and excessive. And in number 6, it is added: It is required that the citation be made legitimately, that is, personally, when it is not prevented by the fault of the one doing the citing. And in number 1, it is said: To establish contumacy, it is necessary, by law, that the party appear within the deadline before the Curia. By a decree of Gregory XVI on November 10, 1834, for regions subject to the pontifical jurisdiction, a period of three days was established for appearing before assessors and other individual judges; for appearing before the tribunal, eight days were established. This certainly requires that the cited party be given a period for appearing that is appropriate for him to complete his journey with some convenience. It can happen that the cited party is legitimately prevented from appearing before the Curia. Regarding the legitimate impediment to appearing, De Luca says in his *Discourses on Justice*, book 9. But when contumacy consists in contempt of the judge, the one who cannot appear due to some just impediment, and not an affected one, should not be considered contumacious. And Pellegrin, in his *Work*, part 4, section 7, number 20. However, it must be noted that whenever someone is cited, and has some impediment of the aforementioned type, or another similar one, he is obliged to send an excuse to the judge, so that he may be informed of such an impediment.

[*Latin ed. p. 391*]

The conduct of the accused must be proven either by some scriptural passage or by a public document, and the impediment that they present for the aforementioned [trial] must be considered. Innocent, in his work *De Accusationibus*, addresses this. Bart, in the aforementioned section, discusses this matter. Bald, in *Margarita Antioche*, under the word "officium," raises question 31. Indeed, they can even be compelled to swear to speak the truth. Article 25 states: "When the accused appears, he must be subjected to the following: With the examination, and to the extent that it is necessary, the examination should be conducted in Latin, so that the clergy may understand; however, their responses should be expressed in their own vernacular. All matters should be recorded in writing by the notary."

2. The examination should proceed in a twofold manner: and those under examination must be treated with due consideration. For the order must be observed, both in the matter of the examination, so that, firstly, a transition is not made from one thing to another that is almost entirely different; and secondly, so that no one makes inducements that lead the mind back to the first [point], but rather, as much as is possible, all questions should be put forth individually; firstly, those that provide the best instruction, which we have at hand, should be separated and accumulated with great diligence, and the lighter and more general questions should

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precede the more specific and urgent ones; and when the accused appears, it is not permissible to proceed to further questions, nor even to a contestation of the matter, but rather, the examination of the matter itself must be undertaken immediately, so that if it becomes impossible to ascertain the truth through such an examination, those matters that are more urgent and of greater importance should be brought forward.

Therefore, and since it is customary for such examinations to be conducted in writing, the following formula is often used: "The aforementioned person, appearing personally in the Chamber, etc., before the Illustrious and Reverend General Vicar, etc., and the Notary, etc., with the Reverend Brno, Promoter of the Fiscal Court of the Episcopal See, etc., having been sworn by His Lordship to speak the truth concerning those matters about which they are questioned, and having sworn (or touched the breast, if he is a cleric), was questioned by the aforementioned General Vicar, etc.; therefore, this is called a 'constituted' examination."

Regarding the manner in which the examination should be conducted, it is important to note the following: 1. It is advisable that the examination be completed on another day. As Pellegrinus, in the aforementioned work, states in the practice of the General Vicar, part 4, section 37: "The judge should, on the first occasion, continue the examination until it is not possible to proceed to further questions; these must be reserved for the interrogations when the examination is continued and completed, not when it is to be abandoned, because otherwise, if they are begun and then the examination is not completed, but is postponed to another day, the accused will not so easily confess the truth, as he might do if the examination were continued."

[*Latin ed. p. 392*]

392 APPENDIX: Regarding the deficiencies, no questions are given; and the interruption, if it can somehow be avoided, can be of great importance, and provides an opportunity for the judgment to proceed without further delay. Otherwise, if the examination is not completed, and the accused hears some word from which he can form a suspicion against him, he will be more cautious in his answers when the examination is resumed, because, considering the intermediate time, he will have had opportunity for deliberation. Furthermore, the day and hour when he heard this word will be entirely different from the place where the examination took place, and the proof of this will only be possible through patience. Therefore, the judge must be patient when completing the examination, allowing those who are closest to the crime to testify, or allowing those who, under the guise of friendship, indicate certain circumstances of the person and things involved. He must allow these urgent matters to be brought forth, which, according to the judgment of criminal law, will lead to the truth. Indeed, when confirmations and responses are given, and when these are estab-

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lished in the mind, he will suggest to that person that he committed the crime. He will insinuate doubt, and will cause that person to suspect. He will make it appear that the fact occurred, but he will designate another as the guilty party, or he will indicate witnesses, or he will present evidence that is placed upon him, so that he himself will subscribe to his own guilt, or something of this nature. If he is unable to write (which is not the case with the clergy), he will be asked to make a mark as a sign of his denial of the fact, and this will be expanded upon, and all that is related to these matters will be brought forth to the conclusion. 54 and 58. Thus far, it is easy to examine or to constitute [a document] with the hand of the accused or the actuary.

Article XXVI prescribes that, in order that the accused may present matters of importance, these, as far as possible, must be extracted from the contestation of the crime, in order to retain the accused as guilty of the crime, and, relative to the litigation, to subject him to the canonical penalty. Therefore, the contestation of the crime is not to be despised, but rather, what are these matters that should not be overlooked, which, before the contestation of the crime, it is advisable to extract? Due to the diversity of cases and the conclusions reached, it is necessary...

[*Latin ed. p. 393*]

IX. At this point, after all the objections raised against him have been collected, whether from the documents themselves, from witnesses, or from the accused himself, if, according to Tradition (Articles XXII and XXIII), the case is established as one in which the accused, being ignorant of the proceedings, is declared contumacious, and such contumacy brings with it canonical penalties. It is clear that a complete examination of the case has been made; the articles XXVI, I and XXVIII are invoked, and it can be stated that the accused, even if he persists in his contumacy, can be declared present in law. Indeed, if the accused, when summoned, is declared absent, and, as is customary, he is not notified of all that is known against him, then he is considered contumacious.

Nothing in the foregoing articles expressly states that the following matters exist in the records:

1. That the accused may be allowed to present his defense through testimony.

2. That, in the case of contumacy, the term for notification is not necessary.

However, it seems that it is not necessary because, when summoned, he is granted the opportunity to respond in writing to the charges, and he himself has been summoned to appear; therefore, he should be aware of what is happening, especially if he is summoned to appear before the Episcopal Court, because, due to ordinary prudence, he would have been

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informed of the charges and the substance of the matter. But his absence provides the strongest argument for his guilt, since he is summoned to appear.

However, since, as expressed in the following article XXVII, the opportunity to confess and to present evidence is granted to the accused, a period of time must be allowed for the examination to be made so that the accused may have full knowledge of all that is contained in the records against him. There are four things that the accused is permitted to request:

1. To state his case.
2. To object to the charges.
3. To produce all the evidence.
4. To adduce witnesses.

We believe that these matters should be handled with caution and fairness, even if they arise from the examination of the case, because the argument for equity is derived from this: that if the accused is not notified of the examination, and the proceedings are not conducted properly, whether in civil cases or in criminal cases, he will be condemned. The terms for these matters are:

[*Latin ed. p. 394*]

39 APPENDIX V. concerning the matter, see *Op. cit.*, part 2, section 1, concerning unions, intersections, and the like; these [are] substantial, as the *minalia* are admitted, with the exception of number 31, which are not to be admitted. Section 2: Furthermore, there are four causes for which [certain things] are produced. What is produced must be cut off and established; those things which are not pertinent must be cut off and preserved, it is decreed, concerning the articles. The *articulo*, which is the term [of the proceeding], whether it be the plaintiff or the fiscal prosecutor, after these articles, must swear that the contents of the articles are true; otherwise, nullity and invalidity would arise in the proceedings. The *articulares* – that is, the articles – are propositions presented to the other party, concerning which the term [of the proceeding] swears: he admits, he rejects, he clarifies, and he provides a response. And this second term is for responding to the articles. In criminal cases, the articles and responses are called *capitula*. In these, the content can be further impugned. The third term is for the positions (or *capitula*) of the articles: it is necessary to allow the defendant time to respond to the articles. Some [writers] note that, in civil cases, the principal positions, which are ordered to the facts, are not simultaneously declared, but are declared in succession. After this term has elapsed, the defendant, having responded to the articles, must simultaneously and in the matter of the articles, present his evidence. The fourth term is for responding to the evidence presented from the book or from those things which are held in the inquiry for the knowledge of

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the court. See *cit.*, part 2, number 2, and following; number 14. Articles: Pellegrin, section 2, and location, subsection 5, subsection 4. We say nothing concerning the kinds of evidence; for some authors note that the depositions of witnesses do not have any weight if, after they have been presented and the clerk has noted the day, month, and year, and the judge before whom the knowledge of the court has been presented, they are examined again, having been presented in the inquiry for exceptions. Therefore, in order to avoid nullities, those articles which have been presented in the inquiry for exceptions must be presented again.

[*Latin ed. p. 395*]

Concerning options. It is safer that they be subjected to a second examination in the course of the proceedings. It is to be assigned. With regard to those things which the witness has testified, which are directly contrary to what the accused asserts, the precautions recommended for the preparation of the process must be observed, when it is a matter of a process of innovation, in which the accused is called to a confrontation. But it rarely happens in the chancery that this is done in the present condition of the Church, so that those who are subjected to it are not exposed to dangers. The defense can abstain from the confrontation, and it can be presented before the full presentation of the case. It cannot be printed in types, because we have expressly noted here, also concerning witnesses, that they must be subjected to a second examination. Many things which have been used up to now, and which are necessary for prudence, are entrusted to the Ordinaries, each of whom knows how far he may proceed. Concerning articles 32. All things are laid out which the Fiscalis must know before presenting the cause, so that he may be able to prepare the accusation, which comes under the name of the inquisitorial process. He must have full knowledge of all the facts, from articles 29 and following, up to 36. We consider the Ordinaries' commentary superfluous. For it is not for us to teach how the acts of the cause are to be prepared, whether they are acquired from this source or from another, or whether they are secular or lay. The defense is sent to the Fiscalis, to be approved by the Ordinary. The Fiscalis, the Defender, and the Promotor of the Chancery tribunal prepare the state of the case. The Vicarius Generalis is the judge, the Promotor Fiscalis is the accuser, the Defender is the advocate for the accused. In all criminal trials, the Vicarius Generalis, if the patron is a layman, must first be strictly examined by him, so that he may not be unrepresented. The Defender ought to come to the Vicarius Generalis, so that he may represent the unrepresented. The Chancellor records the acts. No one should be condemned by a lesser person than the Chancellor. St. O. commands. If the accused refuses to choose a defender for himself, the number of criminal

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sessions is as he wishes.

[*Latin ed. p. 396*]

APPENDIX V. 396. While standing, it is necessary to establish, at least, the peremptory terms, for the dispositive part, which concern the application of the canonical penalty to the condemned, as they have been clearly established. The sentence of condemnation (Art. XLI) and the appeal (Art. XXXVI) are clearly indicated. It is urgently requested that the Apparitor, or "Messenger," perform the necessary work so that the days for the appeal to the superior ecclesiastical court may begin to run. For the term to be observed (as stated in Article XXXVII), the authority established by the Constitution of Council X XIV is to be followed. For those who are members of the military, the Decree of the Holy Congregation of December 18, 1835, and the circular letter of August 1, 1742, are to be observed. We are concerned here with a very serious matter, and rather with a norm concerning the peremptory term for the appeal than with a preventive exception. Therefore, the sentences issued on August 1, 1851, concerning the laws to be observed, were already mentioned at the end of the instructions (See Vol. XIII, page 333). The Holy Congregation, by the Decree of December 18, 1835, orders that the notice be safely published. Indeed, the circular letter of August 1 (1) states that the days should not be counted from the day the sentence was pronounced, but from the day on which it was announced to the condemned or his defender by the Messenger. The instructions contained in the aforementioned decree seemed to us to be necessary, and because the person of the Messenger, who prepares the report of the notification made, is mentioned in the decree, and because the number of days is expressly prescribed for the superior ecclesiastical court to which the appeal is made, according to the instructions, and because in the same decree the Messenger's work is necessary for the notification of the sentence to the defender, we believe that a period of twenty days should be established from the authority for the effect of the notification (Art. XL). And finally (Art. XL), the notification made to the condemned or his older defender is valid, but must be published according to the following procedures.

[*Latin ed. p. 397*]

Another question arises. When a case is brought before Judge X for examination, is an appeal possible? From whom? [397 APPEL] An appeal is possible before the judge to whom the irregularity of infamy or another ecclesiastical sanction is referred, or before the judge to whom the application of the ecclesiastical sanction is referred. The common doctors teach that, while the judgment is pending, or as long as the accused remains in prison, a provisional measure should be issued by the judge, so that the accused does not suffer further harm. However, once the judgment has reached its

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conclusion, unless it is made clear that further proceedings are necessary, the accused should be restored to his liberty. Nevertheless, if it should happen that an appeal is made to the Pope, according to the procedures of the Sacred Congregation of Bishops, or of the Council, provided that this is done within the prescribed time limit, the appeal, the existence of which is established by written notification, will be considered. The Bishop of the Sacred Congregation will then provide a commentary on the matter, and nothing further needs to be added to the disposition of Article XLIV.

The last article, which is certainly of the highest importance, contains the following: "The instruction of the Ordinaries is to be entrusted to the prudence of the Sacred Congregation, so that, while restraining arbitrary actions, it may ensure that the proper course is followed in all cases. Therefore, it is advisable for the Ordinaries to consult the Sacred Congregation to ascertain what course of action should be followed in matters concerning the instruction of ecclesiastical courts and the procedures to be followed." The warning contained in Article XLIII is truly opportune for our times, when, having abandoned all prudence, questions and nullities arise. This is sufficient for the sake of brevity, which we have proposed. If any case should occur in which a broader explanation of these articles is required, or if any clerics should commit crimes for which they must answer to the jurisdiction of their Ordinary, the Ordinary is instructed to provide a summary of the matter to the Sacred Congregation, so that it may examine the facts and provide the necessary assistance. In the next fascicle, we will present documents relating to the matter.

[*Latin ed. p. 398*]

398 Letters of Response from the Bishops of Spain to the Encyclical Letter of the Most Holy Father Leo XIII (1). Most Blessed Father, Our sadness has been turned into joy, because, having received the letter which you, with great care, sent us; we feared that the good and devoted Bishops of the Catholic Kingdom, where peace reigns, might be disturbed by the triumphs and the noble virtues of Spain. These feelings, which, indeed, arose more from the weakness of our spirits than from the true nature of things, have now completely vanished, so that we can, with one mind, send to our venerable and beloved Father, the Vicar of Christ, letters full of gratitude and congratulations, because he has shown us such honor, having considered his sons, the Bishops of Spain, and desiring that they be refreshed with safe and benevolent words, so that they may remain in a sense of unity and perfect obedience, and may support the clergy and the faithful. And since your wonderful instruction has come at a very opportune time, like dew upon parched earth, we neither wish to, nor can we, find a better way to express the parts of our heartfelt observance than by unanimously subscribing to these letters, which are directed towards the Supreme Pastor, from whom we have received the flock to be governed and fed. It is the duty

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of the episcopate, from our Catholic regional part, to confess, to protest, and to make a vow of constant and undisturbed obedience. Most Blessed Father, we acknowledge you to be our teacher, our guide, our support, and our protection. We attest to Your Holiness that our submission is sincere and perfect; and as a pledge of this submission, we promise, without any reservation, that we will not do or say anything that is contrary to those things which, as the most humane Master, you have taught us, and which you have commanded us. Furthermore, the sweetest dignity has been transmitted to us by him who confirms "brother with brother" (1). We have presented this Encyclical Letter on page 241 of this Volume XV.

[*Latin ed. p. 399*]

39. We wish to signify, before Heaven and Earth, and for the edification of the Christian people, that we, all in spirit and in truth, are truly united to our Supreme Leader and to one another, so that in the matters which You, who hold the office of Jesus Christ on Earth, have commanded us to follow, we may never, even in the smallest degree, dissent. We listen when You speak, we learn; we obey when You advise, and we willingly submit when You command. Therefore, let the discussions cease, as the Apostle said: "Let there be no schisms." We therefore hold and believe what we have received, and we transmit what we have learned. Moreover, charity urges us; for as Augustine says, "Where charity is not, there cannot be justice." Indeed, the love of our neighbors does not work evil; and if they did, they would not harm the Body of Christ, which is the Church. Your most Holy Eminences, humble sons and servants, the Spanish Prelates, humbly request the Apostolic Benediction. Given in the Epiphany of the Lord, in the year 1883. AT THE CONSISTORY HELD ON MARCH 15, 1883. The Most Holy Father held a public Consistory this morning in the Vatican buildings; in which he conferred the red hat upon the Cardinals Angelo Bianchi and Vladimiro Czacki, who were created and announced in the Secret Consistory of September 25 of the preceding year. After the public Consistory, the Most Holy Father held another secret Consistory, in which, with a brief address, he proposed the following sees: THE METROPOLITAN CHURCH, the Archiepiscopal Church of Tarsen, vacant, to the Reverend Father Vincent Felinski, formerly Reverend Father Sigismund Theophilus Popiel, in the diocese of Ula, or Kalisch.

[*Latin ed. p. 400*]

400 FROM THE ACTS OF THE CONSISTORY: The titular episcopal church of Tarsus was assigned to the vacant archiepiscopal see, the title of the presbyterial church of Saint Pudens being transferred to the Most Reverend Father Vincent Teophili Popiel to the See of Włocławek, and to the Reverend Lord Dominic, Cardinal of the Blood, or of Kalisz, through the translation of the Reverend Father Gaspar, Bishop of Luceoria, to the See of

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Zytomyr, and to Płock, due to the death of the aforementioned, through the translation of the Reverend Father Sigismund Feliks Felinski, Archbishop of Warsaw, by the grace of his Holiness. The titular metropolitan church of Mohilów was vacant due to the death of the late Anthony Fijalkowski, the last archpriest, outside the Roman curia, through the favor of Alexander Dziewaltowo, and of Casimir de Gintowt, titular Bishop of Helenopolis and suffragan of Płock, to the Reverend Father Joachim, Bishop of Bostren, through the succession of the Reverend Father Raphael Capone, of the Congregation of the Most Holy Redeemer, to the cathedral seat of Murano, through the favor of the Reverend Father Adam Stanislai Kranski, who was translated by the grace of his Holiness to that church. The metropolitan church of Hispalis was vacant; the titular church of Esbonen, under the archiepiscopate, due to the death of the Most Reverend Cardinal Lluch and Garriga, the last archpriest, outside the Roman curia, through the favor of the Reverend Father Vincent Teophili Popiel, translated to the Warsaw See, through the favor of the Reverend Father Zephi-Beresniewicz, Bishop of Tunon, and of the Reverend Father Gonzalez of the Order of Preachers, by the grace of his Holiness. The metropolitan church of Bürgen was vacant, due to the death of the Reverend Father Yusto, and of the Reverend Father Saturnini Fernandez, translated to that church by the grace of his Holiness, for presentation to the Most Serene King of the Catholics. The cathedral church of Płock, by the grace of his Holiness, and the churches of Lausa and Égénéve, mutually, were vacant, due to the translation of the last archiepiscopate, outside the Roman curia, through the favor of the Reverend Father Alexander, and of the Reverend Father Christopher, due to the death of the last Bishop, through the favor of the Reverend Father Gasparis Mermillod, titular Bishop of Hebron, translated by the grace of his Holiness to those churches. The church of Kielce, by apostolic mandate.

[*Latin ed. p. 401*]

The following documents concerning the administration of the "Catholic Church" were issued on December 28, 1882, by the Most Holy See to the diocese of Cattolica, through the Cathedral Chapter or its Delegate Prefect. The aforementioned, in order to honor, and previously holding the title of Examining Pro-Synodal, has been reinstated in the ecclesiastical court, which was vacant due to the new erection, as Cathedral Canon, and again as Rector of the Cathedral, and from his position as Judge favorable to the diocese, he resigns as General Pro-Vicar in spiritual matters. Thomas Theophili Kulinski, titular Bishop of Satalae, has been appointed to the aforementioned Church. With the favor of the Most Holy See, and through his own benignity, he will succeed the late CATHEDRAL CHURCH OF AGRIGENTO. The CATHEDRAL CHURCH OF BLANDINI, with the favor of the Most Reverend Caietani, titular of UskÃ¼b Sergiopolis, and the late Prelate Tofoni, the last Bishop, who died outside the Roman

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curia, with the favor of the Reverend Caietani Lironi, a priest of Spoleto. He, born in Spoleto, having surpassed the sixtieth year of his age, then received the sacred orders, and later the doctorate in theology and canon law. The CATHEDRAL CHURCH OF MONTIS REALISCI is vacant, and through translation, he is assigned to the public, titular church of Aloisii in Pharsalia. The Reverend Roteili, Apostolic Delegate for the Orient, and formerly chosen as Civil Patriarchal Vicar in the aforementioned Prior Basilica metropolitan, along with the archdiocese of the same, in spiritual matters, Gentilucci, and Eabripacrimi, are transferred to the institution for Latins, with the favor of the Reverend Father Luciani, a priest, and until now, General Pro-Vicar of the same See, has resigned. He, born of legitimate, Catholic parents, Eabriris, and having reached the forty-first year of his age, was ordained a priest in the Minor Seminary and Alumnate of the Pontifical See in Rome. The CATHEDRAL CHURCHES OF FABRIANEN and MATHILICEN are perpetually and canonically united, and are vacant due to the death of the aforementioned, namely Leopold Angelic and Santanchè, the last Bishops of those churches, both deceased, with the favor of the Reverend Macarii Soephrini, a priest of Recanati, who received the doctorate in both canon and civil law outside the Roman curia, and is the successor in philosophy, as recorded in the Acts of Recaneti, Volume XV, page CLXXYII.

[*Latin ed. p. 402*]

402 FROM THE CONSISTORIAL ACTS, during the sixty-ninth year of his age, he was instituted, having begun his studies in sacred theology in the eighth year of his age, having been born in the Roman university, and having completed his studies. He received the doctorate in sacred theology, having previously received the doctorate in both civil and canon law. In his youth, he distinguished himself in the philosophical disciplines, and in the canonical institutions and dogmatic theology, especially in the ecclesiastical functions to be performed, receiving penitents in the sacrament of confession, preaching the word of God, and diligently fulfilling the duties of Pro-Vicar General of the diocese and Synodal Examiner. He served in the CATHEDRAL CHURCH of the metropolitan see. After a late vocation to the priesthood, he was appointed Canon, and, in order to honor him, the Florentine metropolitan see, and up to this time, the last Bishop of that see, Anthony Dalena, deceased, outside the Roman curia, favored him. He was also attached to the R. P. Examiners, Caputo, and Charles, a priest of Naples. He is a Canon and theologian among the pro-synodal members.

CATHEDRAL CHURCH of ALGA, vacant. John Mary, the last-born of his parents in Naples, and instituted in the fortieth year of his age, after the death of the aforementioned Bishop, outside the curia, favored by R. P. Father Giordano, of the Order of the Most Holy Virgin Mary of Monte Carto, he received the doctoral degree in both civil and canon law, and

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was then among the members of the academy, and among the domestic officials of His Holiness, and was attached to the Sacred Congregation for extraordinary ecclesiastical affairs.

CATHEDRAL CHURCH of PISTOIA, vacant. Nicholas, a Turritanian priest, who, having received the doctorate in the philosophical and theological disciplines at the University of Turrita, diligently devoted himself to ecclesiastical functions; for almost thirty years, he was a Canon of the church of Santa Maria Transpontina in Rome, and, after the death of the last Bishop of that church, Nicholas Sozzifanti, General of the entire Carmelite Order, outside the Roman curia, he was favored by R. D. Donati Velluti Zati, and until now, he has been a member of the theological college.

CATHEDRAL CHURCH of PRO-SALA, vacant, after the death of Bishop Emericus Szabo, the last Bishop of that see, outside the Roman curia.

[*Latin ed. p. 403*]

FROM HISTORICAL RECORDS: In Uskub, belonging to the jurisdiction outside of the Roman Church, under the patronage of the Most Reverend Cornelius Hisday, a canon of the cathedral church of Strigonium, and the Reverend John Valyi, by the grace of God, King of Hungary, and by the decree of His Imperial Majesty, Francis Joseph I, Emperor of Austria, in the forty-sixth year of the reign of the Apostolic King. The Reverend Cornelius Hisday, having been appointed and, having previously received the doctorate in sacred theology, was born in the city of Komarom, of Catholic parents, and in his fiftieth year of age, was admitted to the service of His Holiness; he is a member of the University of Budapest, and has been distinguished in the sacred orders. He has diligently performed the duties entrusted to him in the care of souls. He was a cooperator, and at one time a professor of philosophy in the archiepiscopal gymnasium of Tyrnau, and also the director of that gymnasium, but he resigned from that position. In the collegiate church of Mukachevo, in place of the late canon, the Reverend George Smiciklas, who belonged to the jurisdiction outside of the Roman Church, and who, under the patronage of the Reverend Elias Hranilovic, a priest of Hungary, was nominated to the section of the Sacred Congregation for Eastern Churches, and resigned from his office in the diocese of Strigonium. By the decree of His Imperial Majesty, Joseph I, Emperor of Austria, and by the grace of God, King of Hungary, the Reverend Franciscus Hrani lovic, a Greek Catholic, was appointed to the cathedral church of Krizevac, in place of the late canon, the Reverend Nikolai Toth, who belonged to the jurisdiction outside of the Roman Church, and who, in the third year of his age, under the patronage of the Reverend John Valyi, a priest of Mukachevo, was appointed pastor of the parish of his diocese,

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and is a canon of the most excellent church of Krizevac.

[*Latin ed. p. 404*]

404. From the Consistorial Acts, it has been reported concerning monastic causes that have been investigated up to this point. In the Cathedral Church of Lucori and Zytomiri, there is a professor of Biblical studies, of the liturgical rites, of ecclesiastical history, and of canon law; in Petrograd, the rector is perpetually and canonically united, vacant, minor, and through the translation of R. P. D. G-a- and the canon law professor, Borowski has been appointed as the defender of the Cathedral of Plocensem, favored by R. D. Simonis, the censor, and by Martin Kozlowski, a presbyter canon in honor, of the diocese of Vilna. He, in turn, is a master of theology and has served in ecclesiastical functions. In the semi-diocese of Vilna, the doctorate has been conferred, and the Cathedral Church of Saint Domiri is vacant. The professor of moral theology and of domestic theology, the last of that bishop, and the rector, and Joseph Michael Iuszynski, in Petrograd, are with the ecclesiastical academy of the Roman Catholic hierarchy. R. D. Sotkiewicz, the professor of ecclesiastical history and of canon law, has been appointed rector and has thus far fulfilled his duties. In the Cathedral Church of Vilna, the vacancy has occurred due to the death of the aforementioned, favored by Anthony Francis Xavier, a presbyter of Sandomi, who is a canon professor, R. P. D. Adam Stanislao Kran- tis, from the Regular Clerics, in the ecclesiastical academy of Warsaw, has been appointed, and has fulfilled his duties in the matrimonial causes of that curia. The scholar of the pious schools, and the vacancy, and the reference in the matters of that curia, have been fulfilled. The canon, up to this point, of the metropolitan of Warsaw, has been appointed rector, and has celebrated Mass, favored by R. D. Charles Kry- niewicki, a presbyter of the diocese of Vilna. R. D. archdiocese administrator. Charles Kryniewichi, the first of the fortieth, of the age of Matthias Wotonczewski, of that bishop, the last, and in the curia, deceased, favored by R. D. Mie- ceslai Pallulon, a presbyter of the diocese of Samogitia. He, having surpassed his forty-ninth year of age, has been constituted, and in the sacred theology, has been conferred the degree, in the Roman Catholic ecclesiastical academy.

[*Latin ed. p. 405*]

Having already attained the degree of Master, he was enrolled among the young men studying languages in the diocesan seminary, where he was ordained a priest, and appointed professor of philosophy, Latin, and sacred theology, serving in ecclesiastical duties, and having been chosen for the gymnasium at Caunensi and for the girls' school, he previously served as a canon of the Samogitian Cathedral, and there he discharged various functions in sacred theology. He was not a teacher of vices, but a house prefect and cantor in the public school of Saltillo, and he served as a brother and

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vice-official in the diocesan Consistory, fulfilling the duties of the superior of the Mexican religious house, ECCLESIA COLIMEN, which is now vacant due to the recent death of its minister. He was appointed doctor of theology by the northern division of Mexico, and from the very beginning of its erection, it has been vacant, thanks to me, Valentine Baranowski, the last R. D. Francis Melithon Vars, that is, the Roman priest of Guadalaxara, who died outside the curia of the archdiocese, thanks to Casimir de Wnorowski, a priest of the archdiocese of Warsaw. He who, having previously received the license in sacred theology, and having been a candidate in sacred theology, discharged his functions in the parishes of his archdiocese, animated the ecclesiastical academy of Warsaw, having taken care of it for many years, and as rector of the archdiocesan seminary, and as professor of theology in the Collegiata of Kielce, he was appointed canon in honor of the aforementioned, and in the absence of the Ordinary, he was appointed rector and professor of the seminary. He was chosen as a scholastic of the CATHEDRAL CHURCH of Pastopolita in the Confederation of Colombia, in South America, and as Apostolic visitor of the same, he was delegated to the lectorate of Cali, and he was previously serving in the metropolitanate of Guadalaxara, thanks to the resignation of R. P. D. Emmanuele Canuto Restrepo, formerly of San Damiat, who, having completed his term of office and having been dismissed, was favored by R. P. Ignatius Velasco and the Society of Jesus, the titular priest of Popayan. R. D. Ioseph Cavaliere, a priest of TANEN, was transferred from the Archiepiscopal Church of Nicosiensem, under the Archbishop R. P. D. Eliae Bianchi, thanks to the Cassanensis diocese;

[*Latin ed. p. 406*]

FROM THE CONSISTORY ACTS 406, the following were also appointed: in the coadjutorate, born in the diocese of Atri, having received a doctorate in sacred theology, the Reverend Father Aloysius Mary Lembo, of the Order of the Minor Brethren of Saint Francis, Observant, Antistite of Cotrone. In Rome, the Reverend Father Joseph Cavaliere, who, at the beginning of his life, exercised the office of Master of Dogma and Morals in his Order, was appointed, after sixty years, General Procurator of his Order. He was constituted in the titular church of Arathen, under the Archiepiscopal See of Patras, having previously received a doctorate in sacred theology. Aloysius Maigret, the last Dean of that college, was appointed to the Metropolitan See of Consentia, having previously been favored with the dignity of Bishop in the seminary of Hollah, within the archdiocese. The Reverend Father Joseph, a presbyter of Warsaw, who was also appointed as a suffragan, renounced his position as Visitator of Seyna, or as Pro-Synodal, and as Fiscal Promoter of the aforementioned Metropolitan Curia. The Reverend Father Joseph, born in the diocese of Augustov, and in the first years of his life in Seleucia, was appointed to the titular church of Milten, under

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the Archiepiscopal See of Patras, having previously been appointed by the Reverend Father Francis John, of the Order of the Minor Brethren of Saint Francis of Paula, Prefect of the Varsavian clergy, and as coadjutor in the pedagogical institute of the same archdiocese, and as curate in the parish of Radzymin, where he teaches adolescents; he was also appointed as successor to the Reverend Father Nicholas of Simon, Antistite of the most holy Trinity and successively of Bova. The Reverend Father Francis John, of the Order of the Minor Brethren of Saint Francis of Paula of Mantua, was constituted in the sixty-first year of his age, in the titular church of Sanctorum, under the Archiepiscopal See of Mantua, having previously been a lector attached to the students of the Order of the Minor Brethren, and having received the degree of candidate in sacred philosophy, theology, and morality, and in the parish of Oppido, he was appointed as coadjutor. He was also appointed as successor to the Reverend Father Aloysius of Simone, Antistite of the most holy Trinity and successively of Bova. The Reverend Father Francis John, of the Order of the Minor Brethren of Saint Francis of Paula of Mantua, was constituted in the sixty-first year of his age, in the titular church of Sanctorum, under the Archiepiscopal See of Mantua, having previously been a lector attached to the students of the Order of the Minor Brethren, and having received the degree of candidate in sacred philosophy, theology, and morality, and in the parish of Oppido, he was appointed as coadjutor. He was also appointed as successor to the Reverend Father Aloysius of Simone, Antistite of the most holy Trinity and successively of Bova. The Reverend Father Francis John, of the Order of the Minor Brethren of Saint Francis of Paula of Mantua, was constituted in the sixty-first year of his age, in the titular church of Sanctorum, under the Archiepiscopal See of Mantua, having previously been a lector attached to the students of the Order of the Minor Brethren, and having received the degree of candidate in sacred philosophy, theology, and morality, and in the parish of Oppido, he was appointed as coadjutor. He was also appointed as successor to the Reverend Father Aloysius of Simone, Antistite of the most holy Trinity and successively of Bova. The Reverend Father Francis John, of the Order of the Minor Brethren of Saint Francis of Paula of Mantua, was constituted in the sixty-first year of his age, in the titular church of Sanctorum, under the Archiepiscopal See of Mantua, having previously been a lector attached to the students of the Order of the Minor Brethren, and having received the degree of candidate in sacred philosophy, theology, and morality, and in the parish of Oppido, he was appointed as coadjutor. He was also appointed as successor to the Reverend Father Aloysius of Simone, Antistite of the most holy Trinity and successively of Bova. The Reverend Father Francis John, of the Order of the Minor Brethren of Saint Francis of Paula of Mantua, was constituted in the sixty-first year of his age, in the titular church of Sanctorum, under the Archiepiscopal See of Mantua, having previously been a lector attached to the students of the

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[*Latin ed. p. 407*]

FROM THE ACTS OF THE COUNCIL, HISTORY 407: The Roman curia, after the death of the aforementioned, with the favor of the superiors of the ecclesiastical order, appointed "R. D. Antonius Zerr, a presbyter of the Congregation of the Tiraspol diocese; he held the title of Collation, was devoted to the sodalities, and was designated as director of the Missionaries in the suffragan see of Tiraspol. R. Conrad, to whom the ritual was duly announced, was born in the diocese of Tiraspol, and held the titular episcopal church of Callinicum. He passed away in the thirty-fourth year of his age. The last catechism of that bishop, carried out outside the register, in the very central schools, was R. P. Fr. Aloysius Sepiacci, dean of the Order for Catholic Churches of Samara. After the death of Anicetus Ferrante, with the favor of the Eremites of St. Augustine, a presbyter, professor of philosophy and theology of the archdiocese of Perugia. He, who among the students in the seminary, in dogmatic matters, and in the Tiraspol Order, performed the duties of Inspector, was attached to the Consistory, and was assessor in the solemnities of the Tiraspol Order of St. Augustine, and was a canon of the same chapter, until he was transferred to Perugia by the Most Holy Pope Leo XIII, who was then wisely governing the Church. The titular episcopal church of Lem Corycenum, increased in the priesthood, and with a doctoral degree in philosophical and theological disciplines, Edmund Knight, born, applied himself diligently to ecclesiastical functions, with the favor of R. D. Thomas Montefusco, a presbyter of Naples; he was also appointed to the auxiliary of R. P. D. Aloysius Margarita, exercising the office of Regent of St. Mary in Posterula, and in the Roman College of Gan- davensis, in the study of the Bishop of Uritania. R. D. Thomas Montefusco, having surpassed the twenty-sixth year of his age, devoted

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himself to ecclesiastical functions, whether by teaching the rudiments of the faith to children, by hearing confessions, or by preaching missions in the villages and towns of the Neapolitan countryside. He was also prefect of the library of the Conservatorio delle Maronite, and an angelical theologian, having obtained the chair of Hebrew and Arabic languages, and of theological places in the Roman University. He performed the duties of secretary general and procurator general of the Order, and was among the Roman Clerical Academics, examiners of the Catholic religion, and members.

[*Latin ed. p. 408*]

408 FROM THE ACTS OF THE CONSISTORY: The theologian from the College of St. Thomas Aquinas in Genoa, having been co-opted, was appointed consultant to the Holy Roman and Universal Inquisition, and to the Congregation for Extraordinary Ecclesiastical Affairs, and also as a delegate to India. The CATHEDRAL CHURCH of Cor-yacan, through the translation of the Reverend Father Zephyrin Gonzalez and Diaz Tuñon, of the Order of Preachers, to the metropolitan See of Hispalense, with the favor of the Reverend Father Sebastian Herrero and Espinosa de los Monteros, of the Congregation of the Oratory, for presentation to the Most Serene Catholic King. DUBEN. The CATHEDRAL CHURCH of San-vacan, due to the death of the Most Reverend Joseph Michael Luszynski, the last bishop of that see, who died outside the Roman curia, with the favor of the Reverend Anthony Francis Xavier Sotkiewiez, a priest of Sandomierz. Who, having recently received the degree as a candidate in sacred theology, and acting as a teacher of religion and morality in the district school of four classes in Sandomierz, and as a professor and vice-rector of its seminary, was appointed as the parish priest of Stupia, in the new parish of his diocese. The assessor of that Episcopal curia, named honorary canon of Lublin, and who had previously held the offices of professor of Canon Law at the ecclesiastical academy of Warsaw, and as a consultant in matrimonial cases of the same curia, was transferred from the metropolitanate of Warsaw, and from the administration of that archdiocese. By papal brief, the following churches were conferred: THE EPISCOPAL TITULAR CHURCH OF THEODOSIOPOLITAN. The Reverend Father Joseph Sembratowicz, translated from the church of Leopoliensi of the Greek-Ruthenian rite. THE EPISCOPAL TITULAR CHURCH OF CLAUDIANOPOLITAN. The Reverend Eugenio Desflêches, translated from the titular church of Sinis, and from the Apostolic Vicariate of Sut-Chuen in China. THE EPISCOPAL CHURCH OF PHAR-SALIEN. The Reverend Aloysius Roteili, Apostolic Delegate for the Orient in Constantinople, and Patriarchal Vicar of the Latins, translated from the church of Montisfalisci. THE EPISCOPAL TITULAR CHURCH OF HERACLEEN. The Reverend Mariano Rampolla,

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formerly of Cornito and Tindaro, Apostolic Nuncio to Hispaniae. THE METROPOLITAN CHURCH OF HALI-FAXIEN. The Reverend Cornelius O'Briert, of the Carolopolitanensis diocese. THE CATHEDRAL CHURCH OF CAROLO-POLITAN. The Reverend Henry Northrop, translated from the titular church of Rosalien, and from the Apostolic Vicariate of Carolina septentrionalis, of which he retains the administration. THE CATHEDRAL CHURCH OF FLUMINIS RAPIDI. The Reverend Henry Joseph Ri-

[*Latin ed. p. 409*]

FROM THE ACTS OF THE MOST HOLY CONGREGATION OF THE ARCHDIOCESE OF CINCIINNATI, TITULAR CHURCH OF MEGARA.

The Most Reverend Monsignor, Mari Joseph Verdier, of the Congregation of the Sacred Heart, appointed as coadjutor with future succession to the Reverend Father Stephen Tanssen, Apostolic Vicar of Tahiti.

TITULAR CHURCH OF MARROCCHIA.

The Reverend Father Aloysius de Gonzaga, of the Order of Capuchins, appointed as coadjutor with future succession to the Reverend Father Ludovic Taurin, Apostolic Vicar among the Gallas.

TITULAR CHURCH OF TRICALEN.

The Reverend Father Adulphus Grandy, appointed as coadjutor with future succession to the Reverend Father Francis John Laonenan, Apostolic Vicar of Pondicherry.

TITULAR CHURCH OF SOREN.

The Reverend Father Daniel, of the Order of the Minor Reformed, appointed as auxiliary to the Reverend Father Ignatius Persico, Bishop of Aquinate, etc.

FROM THE HOLY CONGREGATION OF THE COUNCIL FOR MATRIMONY, on the 12th of August, 1882, and on the 17th of February and 7th of April, 1883.

A SUMMARY OF THE CASE.

Francis, a noble man, entered into a religious marriage in the parish church with Emilia in the year 1856. However, this marriage appears to have been begun under unfavorable circumstances, since, for several years after the marriage, Emilia began to exhibit such signs of dementia that it became necessary to take her to a public asylum, where she could receive the remedies of the healing arts; but all attempts proved so futile that there is no hope that Emilia will regain her lost mental clarity.

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Grieved by this state of affairs, Francis approached the Most Holy Congregation, humbly requesting that, after a proper canonical process, his marriage with Emilia be declared null.

[*Latin ed. p. 410*]

410. Marriages are annulled for two reasons: 1. namely, due to an illicit affinity of the first degree, which renders the marriage invalid; 2. due to a lack of consent. However, if it could not be sufficiently proven in the external forum that the marriage was invalid, the advocate pleaded with the Pontiff to grant a dispensation regarding the marriage, which was valid but not consummated. The advocate stated that it was impossible to restore the accustomed order of life with a woman who, although demented and hysterical, lived in a manner unworthy of all praise.

The advocate, addressing the first point of his defense, stated that it was well known in law that an illicit and perfect union gives rise to an impediment of affinity, which invalidates the marriage up to the second degree, as stated by Reifenst. lib. 4, Decret., tit. 14, c. 2, n. 46, and Sánchez, lib. 7, disp. 64, n. 8. In the case of Francis, it was established that he had had a perfect and illicit union with the mother of the bride, both before and after the marriage, based on: 1. the sworn confession of the bridegroom himself; 2. the confession of the mother of the bride, given at a time when she was not suspected; 3. the confession of the bride herself, before she lost her mind; 4. documents and a written confession given by the father of Emilia, after he had discovered an epistolary correspondence that had taken place between his wife and Francis; 5. witnesses, brought by the bridegroom, excluding those who were older; 6. and further witnesses, including relatives and blood relatives, brought by the court due to Emilia's dementia. Furthermore, Francis, when questioned judicially, responded that he had lived as a husband with his wife's mother for two years, which preceded the marriage, and also for some time after the marriage. Having presented these facts, the advocate maintained that the sworn confession of the husband, especially with the added testimony of seven witnesses, fully proved the case, both according to cap. 4 of the *Proposuisti* on proof, and according to *Re* and *Sol. S. C. C.*, especially in the *Burdigalensi Dispensat, matrim.* of February 26, 1825. And rightly so, for a judicial confession is considered as the queen of proofs, especially when...

DEFENSE OF FRANCIS.

[*Latin ed. p. 411*]

MATRIMONII 411, this is corroborated by the testimony of others, ReifFenst. lib. 3 tit. 18, no. 52. The deposition of the bride's mother, though extrajudicial, is consistent with the sworn testimony of the betrothed, since she declared to her relative that she had been diligently observed by Francis,

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and that she had received certain gifts from him. Another witness testified that she had heard the same. This is also proven by the confession of the bride, who, before losing the use of her reason, recounted to four witnesses the union that her mother had with Francis before the marriage. Regarding this matter, she stated that she could not have felt any affection for Francis, but rather that she had felt hatred towards him. However, it is said that the bride's confession should be given great weight, both because she is better placed than others to understand the actions of her mother, since she was always at home, and because it cannot be presumed that she would wish to slander her own mother. To the objection that the daughter is not fit to testify against her own mother, it is replied, in accordance with Mascardi de probat, conc. 1359, no. 1, that "other witnesses are admitted in those matters which are difficult to prove, such as those which commonly occur in secret, such as adultery, theft, and the like, in which, for the most part, no witnesses are present, except perhaps women and domestic persons." Furthermore, the advocate argues that it can be demonstrated from the correspondence, dating back to the years 1854 and 1855, or before the marriage, that Francis had relations with the bride's mother. Indeed, the bride's father wrote to Francis on April 22, 1874, saying: "I have found some things in your letters which reveal to me, namely, the insult that has been done to me, and the abuse of trust in my house, where you were received as a friend." This custom of yours demonstrates that my unfortunate daughter was cruelly given to you in marriage, in order to protect the honor of her mother. Then, he threatens to send all the letters regarding this shameful custom to the authorities, unless he takes care to consider the well-being of the unfortunate bride.

[*Latin ed. p. 412*]

412. Concerning MARRIAGES, he declared a peremptory two-month term, and after this period had passed without result, he challenged him to a duel. Truly, the Advocate demonstrates what constitutes dishonor for the husband, if not the infidelity of the wife and the violation of her conjugal rights? By what means did he discover his wife to be guilty with Francis, if not because of letters revealing their adulterous dealings? If the father threatens to deliver the letters to the royal prosecutor in order to establish the criminal guilt of the wife and Francis, how can one doubt the existence of a pre-marital union between the daughter and Francis? From these and other considerations, the Advocate concludes that an impediment of affinity arises from the illicit union, and therefore, the marriage is null. He states that he will present further witnesses who will testify to the public reputation concerning the scandalous relationship between Francis and the mother of the bride, whether before or after the marriage. But more pressing matters arise; for the Advocate has demonstrated that these witnesses, influenced by Emilia and the Advocate, confess to the relationship between

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Francis and the bride's mother as truth, even though they claim they never believed that such a relationship existed, and that they were compelled to say these things. After these points, the Advocate presented the theory of Ala, in the criminal code, book 7, section 2, number 58, which states: when dealing with crimes of the flesh, which are abhorrent to light and therefore are committed secretly, circumstantial evidence, presumptions, and conjectures are admissible; a rule established by Farinacio... Zacchia... and confirmed by the Council in the case of the alleged marriage in Calagurita on February 11, 1647, before Meltio, number 10. However, these presumptive proofs, whether derived from antecedent circumstances, concurring circumstances, or subsequent circumstances, and since the Advocate affirms that all of these are present in this case, he concludes that there is no reason to doubt the existence of an illicit affinity of the first degree, which rendered the marriage of Francis with Emilia invalid. Having established the nullity of the marriage, he declares it almost unnecessary to prove it from another point of view, namely, from a lack of freedom. Furthermore, he believes that something must be said about this matter as well, both in law and in fact, so that the judges may be able to render a judgment based on a complete understanding of the case, in accordance with the law. In law, he noted...

[*Latin ed. p. 413*]

MATRIMONII 413, citing De Loriis in his treatise on the Sacrament of Matrimony, page 8, question 21, number 5, which states: "In Matrimony, the most perfect consent is required." Since we are dealing with the matter of betrothal, and this sacrament contains an indissoluble bond, and if it is not pleasing from the beginning, any coercion or influence by force or fear cannot produce a happy outcome. Furthermore, in question 3, section 20, it is stated: "Therefore, contracts begun with grave fear are rescinded." According to the civil law, a marriage begun with such fear is null and void (L. 21 and 22 ff. concerning the rites of marriage). Grave fear, according to the aforementioned author, in the cited passage, number 4, is fear of one's own death, or the death of one's children, parents, or the great and notable loss of one's property, or even the fear of infamy, whether by law or by fact, for it is better to have a good name than many riches. However, the defender has strongly demonstrated this point. Indeed, the marriage was not entered into spontaneously by Aemilia, but against her own inclination, namely, in order to please her mother. The priest states: "From what I know, Aemilia seems to have given her consent to the marriage with Francis reluctantly; but only to obey her mother's requests, while preferring another." The same is repeated by other witnesses. The orator argues that the lack of freedom is evident from the unhappy outcome of this marriage. And therefore, he argued, there is no need to renounce the marriage, not only because of the impediment of affinity due to an "illegitimate union,"

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but also because of the lack of full freedom in Aemilia. The orator then proceeded to another point in his defense, stating: "If, hypothetically, a valid renunciation of this marriage were permissible, then a dispensation could not be denied: because there are grave reasons present for its relaxation." He seeks to demonstrate that the marriage was not consummated, based on the sworn testimony of Francis. "I believe," said the man, "that the marriage was never consummated, because the wife always opposed the consummation." This testimony must be given full credence; for the sworn affirmation of one spouse is considered to be true.

[*Latin ed. p. 414*]

414. Regarding the marriage, and because witnesses testify that the man was adorned with good morals, and was entirely incapable of lying, these testimonies are corroborated by other witnesses* who speak positively about the man's religion and morality, and who attest to a favorable opinion of him regarding public matters. However, concerning the fiscal witnesses, the advocate pointed out that they also either speak favorably of Francis, or at least not unfavorably. Therefore, he concludes that there is no reason to doubt that the man's affirmation, made under oath, regarding the lack of consummation, should be considered true and free from falsehood. Furthermore, great weight must be given to the testimony of seven witnesses, who, as if with one voice, agree that the spouses lived separately, and that Aemilia persecuted her husband, because she knew of his illicit relationships with his mother. All of them testify that the marriage was not consummated, and that no children were born, either legitimate or illegitimate. Then, proceeding to examine the seven witnesses brought forth by the Fiscal Department, the advocate observed that the first three either asserted nothing about the consummation, or they asserted that the spouses lived separately, and certainly had no children. However, the testimonies of those who claim that the woman had an abortion, or that she lived for eight days with her husband in the same bed while visiting friends, are implausible. For it is established that they did not visit these friends, and that Aemilia had been fostering friendships with other lovers since the beginning of her marriage. It can also be presumed that she became pregnant by someone else, and that she procured an abortion in order to prevent the matter from being discovered by her husband, in order to avoid lawsuits. Finally, addressing the reasons for the dispensation, the advocate argued that two reasons exist, and that they are indeed so serious that they are sufficient to obtain the dispensation. He stated that the first of these reasons lies in the incurable illness in which Aemilia suffers, from which, according to the confession of both physicians, she is afflicted. The second reason he places in the danger of incontinence in which Francis finds himself, and in the love he feels for the welfare of his offspring. Furthermore, the advocate added that the very Church does not wish to

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compel anyone to enter into a state of violence.

[*Latin ed. p. 415*]

CANON 41: When a grave detriment to the soul can occur, and a remedy is sought that does not infringe upon anyone's rights. Therefore, when in a case, whether concerning an impediment of affinity, an illicit union, or a lack of consent on the part of one of the parties, it is clearly established that the marriage was valid but not consummated; and when it is also established that there are two reasons present, and these reasons are most urgent for obtaining a dispensation, the advocate concluded that the marriage should be declared null, or, if that is not possible, that the requested grace of dispensation should be granted to Francis.

OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. The defender, addressing the first point of his argument, having omitted the discussion concerning the nature of the impediment, asserted that the entire question revolves around the proof of the existence of the impediment, especially when it is a matter of dissolving a marriage already contracted. For, according to the prescriptions of the sacred canons, and especially chapter 3, "De eo qui cognovit consang." (Concerning him who has recognized the kinship), and the opinions of the Doctors, when it is a question of invalidating a marriage already begun, a full and indeed juridical certainty of the impediment is required; and he asserted that, lacking this certainty, the marriage cannot be dissolved. Thus, Alexander III, in chapter "Super eo," and Cosci, in "De Separat. Thori," book 1, chapter 6, number 35, and the Rota, in the decision of 1317, before Lancetta, held the same opinion. Nor did the Sacred Congregation of the Council hold a different opinion, as seen in the decree of Asculana, July 4, 1668, § "De modo." He further observed that the difficulty of obtaining such proof is increased if the cause of the impediment is hidden, and even more so if it must be proven against the deceased party. But, whatever may be the case with this special circumstance that occurs in the matter at hand, adding to the nature and qualities of such proofs, he noted that the confession of the spouses alone, with the testimony of seven witnesses, is sometimes not sufficient to prove the impediment. He added that the cited chapter "Proposuisti 4 De probat." (Proposed 4, Concerning Proofs) does not apply to the matter, since it speaks of one who, after a three-year experiment of marriage, asserts its lack of consummation. Special, however, in the matter...

[*Latin ed. p. 416*]

4. It is necessary that the prescriptions of law be observed, and precisely, chapter 3, concerning him who knew [of the impediment], in which Alexander III decreed: "Concerning him who declared that he knew that a woman had been proposed to his brother before she was joined in marriage, we respond to your prudence that, unless this has been public

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and notorious, or confirmed by suitable witnesses, you must not allow the aforementioned marriage to be consummated by that very declaration." Likewise, Celestine III, in chapter 5 on the same matter, states that only the confession of those involved, or the rumor of neighborhood relations, should not suffice to separate them. Reiffenstuel, in book 4, title 19, number 16, Schmalzgrueber, in the same place, and Cosci, book 1, chapter 6, on separations, have also transmitted the same doctrine, following this reasoning: that to the one who confesses his fault to his advantage, faith is not to be given. *Digest*, book 48, title 18, §. T. Nor do the criminalists of our time, Renazzi, Carmignani, and Desquiron, think otherwise; the last of whom, using the words of Quintilian, says: "Such a confession should be considered as made by a madman: for he who accuses himself seems to be acted upon by madness, or by drunkenness, or by error, or by deceit." These things, which are established, must be observed all the more when both spouses confess the crime, as the defender of the marriage bond affirmed, if only one confesses the crime, as is verified in the matter; because the bride suffers from dementia, and her mother, falsely accusing, is deceased. Nor can anything be inferred to the contrary from the confession of the deceased regarding her own crime, even if it was committed at a time when there was no suspicion. In the letter sent by the deceased husband to Francis, from which the alleged adultery is deduced, there is no explicit mention of a complete adultery. However, the defender of the marriage noticed that the love letters, written by Francis to the deceased mother-in-law, and found by the deceased husband, from which Francis's advocate believed he could prove the crime of adultery, should be held in no regard: because, since they do not exist in the records, they cannot be subjected to examination. Regarding this matter, the Sacred Congregation of the Council responded in similar cases, that...

[*Latin ed. p. 417*]

MATRIMONII 417: It is established that there exists a decree concerning the "nullity of marriage," as can be seen in Verulana on July 5, 1856, and in Pisauren on May 22, 1875: in both of which the same judgment was rendered, although the confession of both spouses was present under oath. (1) After these matters, proceeding to the second inquiry, it was deemed necessary to note primarily that such witnesses should not be, so that they relate a fact perceived by sight, since it can happen extraordinarily that they are found in the midst of an adulterous act. But it is evident that witnesses are required by law who will relate concerning indications or circumstances, so that the act may be proven by induction; and these indications must be supported by such circumstances as to exclude carnal commixture. It was argued that this carnal commixture cannot in any way be proven from other ordinary and remote indications, which suggest the suspicion of an illicit friendship, but certainly do not prove that a perfect carnal act has taken

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place. For daily experience teaches that many adulterers are found who live in the hope of having intercourse, but frustrate each other, although they do not abstain from obscene acts. What indications, however, are said to demonstrate a violent act leading to perfect copulation, can be deduced from chapter 12 concerning presumptions, where it is stated that it is a grave indication when a naked man is found with a naked woman, alone with alone, in secret places and hidden locations, in places convenient and concealed for this purpose. Therefore, the testimonies of witnesses are said to import a grave presumption, if they have seen a naked man with a naked woman, or a man alone with a woman alone; thus all Doctors teach, and especially Cosci, book II, chapter 2, number 29, Barbosa in Collect, doct., Ursaia in volume III, part 2, Disputation 9, number 26. It is objected that a theory is taken from Ala, which seems to admit lighter signs as constituting proof of the fact; since it speaks generally of crimes of the flesh, and not of a copulation actually consummated, which would be an impediment to procreation. (1) In Pisauren, you will find a similar question related in Volume VIII, page 630, in the annals; also in volume XV, page CLXXVII, number 27.

[*Latin ed. p. 418*]

418. Regarding the marriage, in addition to the aforementioned legal provisions concerning evidence, the testimonies of the individual witnesses must be examined. This includes the letter of the deceased husband, which was mentioned above, and the testimony of Aemilia: since it is unusual for a woman to contradict her own statement, and furthermore, the improper words spoken against the man in a moment of anger and fury are merely generic expressions, which are subject to the same exception as the testimonies of other witnesses; indeed, all of these witnesses generally and from hearsay relate what they know. From this sum of testimonies, nothing can be deduced, nor can any support be drawn from which a presumption of a violent union can be derived, from which an impediment arises. Only one witness testified that a garment was given to Francis, but this certainly is not a sign of a union having taken place, nor is it the price of prostitution; at most, it can be said that it was done to overcome the woman's reluctance; indeed, this witness interprets such a gift as an indication of good intentions, saying: "I believe he did this in order to facilitate the beginning of the marriage." Thus, the value that should be given to the rumors of the neighborhood and the common people is demonstrated in chapter 5, "On that which is known," as the Doctors have taught, among whom Devoti *Ius Canonicum Universale*, book II, title 19, § 13, and Reiffenstuel, book II, title 20, number 391, are cited. It is rather worthy of admiration that the priest concealed so much notoriety and rumor concerning the dishonorable conduct of Francis with the bride's mother before the marriage, so that he could, with a clear conscience, permit the marriage, with dispensation

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and announcements, to be celebrated. Indeed, the priest's method of acting is demonstrated, that no suspicion, even the slightest, arose at the time of the initiation of the marriage, concerning such an impediment, which only became known to Francis's friends twenty years later. Continuing with his observations concerning the assertion of the impediment, he states: "To invalidate a marriage, not any diminution of freedom is required, but one that is grave and that originates from an external source, due to an unjust fear instilled to extort the act." He admitted that the cause of fear can be verified, even if the evil that threatens does not directly concern the person.

[*Latin ed. p. 419*]

419. The marriage agent acted on behalf of a person, but one closely bound to him. However, he claims not to understand how Emilia could have been driven to enter into marriage by such a grave fear, namely, that she might consider the honor of her mother, and in order to avert quarrels and scandals. For either Emilia did not recognize the shameful relationship between Francis and her mother, and in this case, the fear and mental anguish were absent due to the lack of imminent evil. Or she did recognize it, and then she realized that the evil she feared was not that which would result from the marriage itself, but rather a just punishment that the husband would inflict upon his wife, entirely independent of the daughter's marriage, which could even occur after the marriage had been contracted. Thus, the bride was, or was not, being compelled to prevent this through marriage. But, assuming that Emilia foresaw that through marriage she would prevent the imminent evil to her mother, it seems that the marriage was an act of free will rather than compulsion, namely, to serve her mother in a shameful way. This, however, is difficult to accept in a virtuous and intelligent daughter, such as Emilia is said to have been by all witnesses; rather, it is more likely that this daughter was completely unaware of the relationship between her mother and Francis, as is clearly evident from the testimonies of the witnesses. He also adds: If, after the marriage, such a scandalous relationship could arouse such jealousy and anger in a woman that she would reject her husband, how can it be conceived that there was no impediment to her entering into marriage with Francis beforehand? On the contrary, it appears that Emilia entered into marriage with Francis with such tranquility of mind that she repeatedly protested during the time of the marriage, having been content with her marriage. The Defender does not claim that there was a reverential fear present before the marriage; for there were no threats, beatings, or intolerable evils to compel Emilia. Not a word is said about these by the witnesses; indeed, the witnesses summoned by the Bishop completely deny that Emilia entered into marriage

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with Francis out of reverential fear. As for those witnesses,

[*Latin ed. p. 420*]

I 420. Concerning marriages, it is said that the seventh witness must provide greater testimony than those brought by Francis, because he is bound to them by the bond of friendship. After a short time, and although fear had indeed arisen, he nevertheless warned that the fear so strongly felt must continue even during the celebration of the marriage, otherwise, it cannot be said that the fear truly existed. This point, which was lacking, is also drawn from the testimony of the man and the parish priest. When asked by the judge how the bride had behaved in the church, the first replied: "The bride gave her consent, and I did not observe any difficulty in her." The other said: "The bride freely expressed her consent before me." Hence, the advocate for the *Vinculum* was astonished at how the question of a lack of consent could arise, when almost no arguments were present, even to suggest suspicion. On the other hand, the *Vindex* argued that the consummation of the marriage could clearly be denied, based on the history of the facts. Indeed, from the testimony of the man himself, it is clear that the couple had lived together, remaining after the celebration of the marriage in the mother's house, and sleeping in the same room at night; and then, for many years, they slept in the husband's house, among other places, until the bride was admitted to a hospital due to dementia. From these facts, anyone can see a very serious presumption of the consummation of the marriage arising. This presumption does not yield to the truth, unless very serious contradictory evidence is presented. However, these contradictory pieces of evidence are improperly placed solely in the confession of the couple, even when joined with the testimony of the seventh witness: since, contrary to the teaching of all Canonists, this is asserted as if it were true, as Cosci correctly states in book III, chapter 2, number 147, concerning separations. Furthermore, since the bride is unable to speak, there is a lack of concurring testimony from the couple. After these things, the *Vindex* said, it is useless to discuss the reasons for a dispensation; but these reasons are completely lacking. For the true reason for which Francis sought the dissolution of the marriage is that many witnesses believe that he wished to free himself from the obligation to pay.

[*Latin ed. p. 421*]

MATRIMONII 421, concerning the monthly allowance for the unfortunate wife, detained in the asylum for the insane. After considering the circumstances from both sides, the question was raised as to how the following matters should be decided (Doubts I. Whether there is a question of the nullity of the marriage in this case. And II. Whether it is necessary to consult with the Most Holy Fathers regarding a dispensation from the marriage, which was valid but not consummated, in this case. RESOLUTION.

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After careful deliberation, the Sacred Congregation decided on August 12, 1882, to respond: To both questions, negatively. PROCEEDINGS. Francis's advocate requested and obtained a new hearing; and he also requested that three other witnesses be heard before the Tribunal, through a new process, so that the nullity of the marriage, due to a dispelling impediment, arising from an illicit union, might be more strongly demonstrated. And indeed, three witnesses were duly heard; the first, a servant of Francis, testified under oath that he knew the mother of Aemilia well, and that he knew her to be of the worst reputation among all; so that she lived with Francis as husband and wife. Furthermore, he testified that he had often seen the mother of Aemilia and Francis in the bedroom of his master, completely undressed, and that he had once seen them in carnal union. However, the witness stated that all of this occurred before the marriage; at which time Francis visited that woman twice a week while he was working in the countryside. Another witness testified almost the same regarding the bad reputation of the woman, and regarding the scandalous relations with Francis, although he did not see them naked, nor did he see them in carnal union. The third witness, the doctor of the hospital in which the woman is detained, stated that he was able to question Aemilia regarding the scandalous relations of her mother with Francis. This woman, as she remembered the things that had previously troubled her, stated that it was clearly known to her that her mother had carnal relations with Francis; which was stated by the mother.

[*Latin ed. p. 422*]

422. The marriage itself had been known; and furthermore, she had revealed to her daughter the place where they met to indulge in their lusts, and the pleasures they experienced with Francis. She had told her daughter to urge her to enter into marriage with him. Moreover, she had also learned that the lovers went to the mother's country estate to indulge in their desires. "These things," said the advocate for Francis, "are sufficient to establish the impediment fully, since violent indications of the necessary act are present, as stated in the letters of chapter 12 concerning presumptions, in Cosci's book 2, chapter 4, number 19. We have a naked man with a naked woman, not just once, but frequently; we have a secret place, namely, a bedroom; and finally, we have the act of copulation. In addition to this, there is Francis's bi-weekly visit while the lover was staying at the country estate, and the delays of the husband, which occurred until late at night, and sometimes until the early morning, and the public notoriety of these illicit loves. The depositions of Emilia cannot be dismissed as those of a madwoman; because they are consistent with the depositions of other witnesses in substance and in the places mentioned; and because they indicate the cause of her knowledge, namely, the confession of her mother and father. However, the defender, *s. Vinculi*, objects, and after refuting the ar-

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guments that were presented again, he says that the testimonies presented, which are composed of circumstantial evidence, are completely devoid of strength. With these premises, the following points were to be considered: I. Whether one should adhere to or depart from the decisions made in the first question in this case. II. Whether one should adhere to or depart from the decisions made in the second question in this case.

RESOLUTION. The Sacred Congregation, after further deliberation, on February 17, 1883, decided to respond: To I. In light of the newly presented evidence, one should depart from the previous decisions. To II. As decided in the first. A third point was then raised at the request of the defender.

[*Latin ed. p. 423*]

Regarding the sacred bond of marriage, which was discussed on April 7, 1883: The Congregation responds to the proposed doubt, in the second part of the decisions, number 423. From the following points, the following is gathered:

I. It appears that an impediment of affinity, arising from the crime of adultery, can be present, and that there is not entirely lacking a legal proof of its existence.

II. Indeed, from chapter "De eo qui cognovi," canon [number], it is understood that a public and notorious impediment, or one proven by suitable witnesses, must be demonstrated in order that the validity of the marriage may be established.

III. Nor is proof sufficient, derived from the rumors of neighbors, or from the confession of the spouses, concealing their own wickedness, to always render a marriage invalid; because he who accuses himself may appear to be acting from error or deceit.

IV. Although it is not required that the witnesses be such that they recount a fact that they have seen, which would often be impossible; nevertheless, they must, by law, be such that they recount the indications or circumstances in such a way that the act is proven by induction.

V. From the most recent testimony of the witnesses, the impediment "appears to be clearly present," for all the extreme elements were present that constitute legal proof: namely, a naked man and a naked woman, a secret place, and the conjugal act.

[*Latin ed. p. 424*]

42. CONCERNING THE DISTRIBUTION OF BENEFICES. On the 12th of August, 188[?], a summary report was presented. The Bishop of Oseen, having received certain information on the 15th of March of the preceding year, addressed the Most Holy Prince, stating that within the episcopal city there existed a collegiate church called *Capitulum ecclesiasticum a s. Laurentio nuncupatum*, in which the benefices consisted solely of distributions for daily sustenance. Because of a shortage of priests, the pre-

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ceding bishops had selected several members from this collegiate body, granting them benefices and entrusting them with the task of teaching in the diocesan seminary, while still allowing them to fulfill their choral duties. However, this arrangement gave rise to several inconveniences: 1. The students often lacked sufficient time to study in the evening, as they left the morning classes by noon; 2. The explanations given were shorter than what was necessary; 3. There was a great lack of uniformity in the seminary, because some professors taught their students at different and more convenient times; 4. At times, because of the demands of the collegiate duties, the professors who also held benefices either did not attend the seminary, or they gave only very brief lessons. Wishing to remedy these problems, the Bishop decided that, for the sake of discipline and for the greater progress of the students, all professors holding benefices should fulfill their teaching duties at the same and more suitable times as the other cathedral canons. As a result of this decree, the professors holding benefices could not participate in the choir except on days of vacation; and from this arose the question of whether the professors holding benefices, who were absent from the choir on the days when they taught in the seminary, were acting lawfully.

[*Latin ed. p. 425*]

Those [individuals] who possess at least two-thirds of the fruits of a benefice are able to receive them. The Bishop, not daring to settle the matter according to his own judgment, appealed to the Sacred Congregation [of Rites] so that, after mature deliberation, it might deign to authoritatively declare which part is due. A synopsis of arguments that favor the beneficiaries. Primarily, the beneficiaries argue that they are entitled by law to receive at least two-thirds of the distributions, both by the disposition of the canons, by the teaching of the interpreters, and by the practice of the Sacred Congregation. Indeed, it is established by law that he who is absent from the choir does not partake of the fruits [of the benefice], except for those who are excused by infirmity, or by a just and reasonable bodily necessity, or by evident utility to the Church; moreover, such an absent person is, by a legal fiction, considered as present, for the purpose of receiving the fruits and the daily distributions, cap. 6 [of the *Consuetudo de Clericis non residentibus*]. Wherein Boniface VIII decreed: "Those absent from the choir are to be deprived of the distributions, except those excused by infirmity, or by a just and reasonable bodily necessity, or by evident utility to the Church," and which the Fathers of Trent confirmed in Session 24, *De Re formando*, chapter 2. Furthermore, it seems favorable to the beneficiaries, chapter *Super Specula*, book 5, title 5, on teachers, § on those who teach; where it is granted to those who teach the faculty of receiving the revenues of their endowments and benefices, notwithstanding any custom or statute: for those who work in the vineyard of the Lord ought not to be defrauded

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of their wages. And Fagnanus, in the aforementioned work, clearly teaches that teachers who hold benefices, which consist only of distributions, receive two-thirds, losing the other third, which is increased for those present. Having stated the above, let us add that almost all interpreters agree that in churches where benefices consist only of daily distributions, two parts of the distributions take on the nature of a stipend; the other third part remains as a true distribution, and this is enjoyed by those present, while those absent lose it; Lucidi, *De Distrib.*, number 29; Piton.

[*Latin ed. p. 426*]

426 oscEN. scept. Eccl. XXXIV num. 1, Pignat. Consul. 1J5 num. 42 tom. 9. If, by hypothesis, endowed professors are not entitled to this benefit, nevertheless, considering the dictates of equity, the Bishop's earnest prayers, the existing necessity, and the benefit to the Church, an indulgence should be granted for at least five years, for the following reasons: 1. The Sacred Congregation of the Council has often granted this indulgence to teachers. 2. In this case, the Bishop cannot otherwise promote the discipline of the Seminary unless three endowed professors are retained in their office. 3. Furthermore, the stipend assigned to the teachers cannot be increased in any significant way. 4. Finally, the Bishop himself offers prayers to the Sacred Congregation, so that at least an indulgence may be graciously granted for five years, benefiting the three endowed professors upon whom the burden of teaching rests.

WHAT IS RAISED AGAINST ENDOWMENTS. On the other hand, it seems that the law obstructs the prayers of endowed professors. Firstly, the established norms of ecclesiastical law explicitly state that only those present at the choir receive distributions. Regarding this matter, in chapter one, concerning non-resident clerics, Boniface VIII decreed that distributions should be given daily to canons and other endowed individuals who have attended services in those churches; but those who receive anything otherwise do not acquire ownership of the things received. From this, a theory has arisen, well-known in schools and in the forum, namely that distributions to endowed individuals are due not by reason of the endowment, but by reason of the service rendered in the Church. These provisions are confirmed by chapter 3 of Session 22 concerning reform of the Council of Trent, which affirms what Boniface decreed in the aforementioned chapter, strictly commanding that it be observed. Furthermore, the chapter opposes the endowed professors with the custom by which professors teaching in the Seminary have always lost these distributions. Furthermore, the declaration of the Sacred Congregation of the Council, cited by Barbosa on page 544, and the doctrine expounded by the same author, as well as Gonzalez

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in register 3, are also opposed. Finally, the chapter opposes...

[*Latin ed. p. 427*]

427. It has been necessary to consider the claims of testators regarding benefits to be granted to the choir; and since the will of testators must always be observed, as all laws proclaim, it seems to follow that such requests for benefits are not, in this case, to be considered valid. With these reasons noted from various sources, the matter was referred to the superiors to determine how the requests should be handled.

RESOLUTION. The Sacred Congregation of the Council, having considered the matter, responded on August 12, 1882: For the benefit of those who teach, a period of five years is granted, during which they may receive two-thirds of the distribution.

FROM WHICH IT MAY BE GATHERED:

I. That those who labor in the Lord's vineyard should not be defrauded of their wages; therefore, according to the decrees, those who hold benefices may receive two-thirds of the distribution.

II. That those who hold benefices in the diocese, when they teach, are absent from the choir for the benefit of the Church; therefore, they have obtained the right to receive two-thirds of the distribution.

-!--!-● NEAPLES - VISITATIO. On September 9, 1882, Franciscus Pignatelli, having presented a petition, stated that he enjoys the lay patronage over the church of St. Mary, by virtue of which he appoints rectors, establishes and reforms statutes, and receives the bodies of relatives, independently of the Ordinary. Since the aforementioned orator has exercised the rights of exemption from the Ordinary, according to the Bull of Leo X, from the year 1697, a prescription exists in his favor, lasting more than a century, which has never been interrupted. However, the archiepiscopal court, concerning the aforementioned...

COMPENDIUM FACTI.

[*Latin ed. p. 428*]

428 Presuming to exercise its jurisdiction over the Church, the Visitation instituted a Visitation. Therefore, the advocate implores Your Holiness to deign to declare that the aforementioned Church is exempt from all episcopal jurisdiction, including the Visitation, by virtue of the Bull of Leo X and the prescription of law. Upon being questioned about the matter, the Archbishop sent a copy of the Bull of Leo X; and he added that, by the same Bull, the grace had been granted which Count Pignatelli had requested in a suppliant letter; but that no mention was made therein of the alleged exemption from episcopal jurisdiction.

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DEFENSE OF THE PATRON. To demonstrate the exemption of the Church of Saint Mary, he quoted the following words from the Bull: "And furthermore, to you and to other noble men of the family of Pignatelli, for as long as they exist, the right of patronage, and of presenting a suitable person to the aforementioned perpetual chaplaincy, whenever the same shall, for the time being, become vacant in any way, and of appointing chaplains, a sacristan, and ministers in said Church."

Indeed, the words of the Bull of Leo X, which grant the family of Pignatelli the fullest freedom, not only from the jurisdiction of the parish priest, but also from the power of the Bishop, seem to leave no room for doubt; since Barbosa, in Allegation 123, no. 14, on the office and power of the Bishop, states that the Supreme Pontiff seems to grant an exemption from the power of the Ordinaries when he grants full freedom to a person or place. Furthermore, Franc. in Cap. 1, §. illum num. 3, on the meaning of words, book 6, Erasm. a Cochier, quaest. 9, num. 1, vers. Gaudeat.

Moreover, everyone can easily perceive that the patron has been granted full freedom over all matters pertaining to the aforementioned Church, provided that they turn their eyes to the words of the aforementioned Bull, even for a moment. Assuming that such a Church is exempt from the power of the Ordinary, and the Holy See...

[*Latin ed. p. 429*]

429. The immediate consequence of a visitation being granted is that the Bishop cannot exercise any act of jurisdiction therein, and therefore, he cannot perform the canonical visitation. *Conc. Trid.*, session 2, chapter 9, *de Reform.*; Pitonius, *de controv. patr. alleg.*, 2, 3, no. 2; Lucidi, *de visit.*, vol. 1, p. 132, no. 29.

It is asserted that the exemption has been confirmed by the observance of a very long period of time, by virtue of which the aforementioned right of exemption from the authority of the Ordinary has been exercised since the year 1698 until the present day, thereby establishing a prescription of more than a century.

The force and efficacy of a centennial custom are demonstrated not only by the censure of both civil and canon law, *L.*, *de quibus ff.*, *de leg.*, *C.*, but also by the doctrine of all interpreters and the practice of the sacred tribunals.

It is argued that this cannot be governed by the text in *cap. Cum ex officio, de praescriptione*, where it is stated that a visitation cannot be prescribed. However, it is suggested that this objection can be overcome by noting that episcopal rights are subject to prescription, as stated in *cap. Audistis* and *cap. Cum olim, de praescriptione*; therefore, a visitation can also be prescribed, since it is a matter of episcopal rights. *Cap. Conquerente de offic.*

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However, the objection is directly addressed in *cap. Cum ex officio de praescriptione*, citing Barbosa, who in *Allegat. 1, 29*, no. 9, *et seq.*, concerning the Office and Power of the Bishop, states: "A prescription that completely abolishes a visitation that is justly commanded by common law is prohibited, although it is admitted that one that transfers it, or accumulates it with others, is admitted; as is also admitted one that completely abolishes a visitation that is specifically required by law."

Given these principles of law, it is argued that in the present case, we are not dealing with a prescription that completely abolishes the visitation that is rightfully due to the Bishop by common law, but rather with one that transfers the right to visit to the Holy See. Therefore, it follows that such a prescription must be admitted. And this is so, as wisely observed by Barbosa in the aforementioned passage, no. 13: "Such a prescription, speaking absolutely, is not against a visitation."

[*Latin ed. p. 430*]

430 The visitation, which is not abolished, but rather opposed by the Prelate to whom it pertains. Therefore, since it cannot be doubted that the Church of Saint Mary is exempt from the power of the Bishop, it appears to flow abundantly, and is in no way subject to episcopal jurisdiction, and consequently cannot be visited by him. DEFENSE OF THE ORDINARY. Here, he sought to demonstrate that the Church of Saint Mary is in no way exempt from his jurisdiction; and therefore is subject to visitation, because in the Bull of Pope Leo X, which was requested for a different purpose, not a single word is found that could imply a pretended exemption. And indeed, by this Bull, the Supreme Pontiff granted the perpetual right of presentation to the Count Pignatelli and his male line: namely, he granted what the aforementioned Count had requested in a suppliant petition; but not a single word about exemption from the jurisdiction of the Ordinary; hence, it is clear that the right of visitation was not violated, but remained in its full force. And the argument seems correct, because the matter at hand concerns a thing which is most odious and restrictive of episcopal jurisdiction, which therefore cannot be admitted unless the words of the law expressly suggest it, since it is necessary to restrict odious things, as stated in L. "De lib. et posth." Cap. "Odia de reg. iur." in 6. Indeed, even if it were granted, but not conceded, that the Church of Saint Mary should be considered exempt under the force of the aforementioned Bull, it nevertheless remains subject to the visitation of the Ordinary, as Barbosa states in Alleg. 123, no. 30, of "Oficio et Potest. Episcopi," that in causes of visitation, a simple exemption does not exempt anyone, unless a special and express mention is made of it. Paul Fusch agrees in "De Visitat," lib. 2, Cap. 20, no. 10. Pitonius, in "De Controv. Patron," alleg. 23, no. 2; and the Rota decided in no. 186, part 1, divers. For the privilege of exemption does not include exemption from visitation, as Lucidi states in "De visit. ss. LL.," vol. 2, p.

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487, no. 244. It does not seem to present a difficulty that the matter at hand concerns the lay right of patronage. For the words of the decree...

[*Latin ed. p. 431*]

43. In the diocese of Trent, all pious places can be visited by the Bishops, even though the care of these places belongs to the laity. Therefore, the lay nature of the place is not an impediment to the Bishop exercising his right to visit it. (Moncel, *Form. leg.*, vol. 5, form. 1, no. 10; Pitonius, *op. cit.*, allegation 32, no. 5; Gonzalez de *benef.*, p. 1, no. 2, no. 104; Castrop, *oper. moral*, tract. 13, de *benef.*, disp. 1), and this has been confirmed by the Sacred Congregation of the Council in Imola, on November 25, 1692, and July 20, 1693, as cited by Moncel, *I. c.*, and in the documents of the Redemptorists of Foligno, August 8, 1772.

Furthermore, descending from the law to the facts, the Ordinary, in order to protect his jurisdiction, observed that the sacred office of visitation in this church of Saint Mary had been fulfilled for many centuries by his predecessors, up to the year 1698. Moreover, the Bishop stated that the chaplains presented to said chapel had always received their institution from the Ordinary of the place: a fact which indicates that the right to do so had been recognized in that diocese. Indeed, the best interpreter of the law, according to Lotter, *de re benefic.*, book 2, question 1, no. 125; Cardinal De Luca, *de Iur. patron.*, discourse 60, no. 9; Tondut, *Quaest. beneficiai*, part 3, chapter 157, claims the greatest authority, especially when, as in this case, he is the closest and most contemporary (Piton, *Discep. Ecclesiast.*, discourse 159, no. 44, §).

We have here the objection that the church of Saint Mary has never been visited by the Ordinary after the year 1698, and therefore his right to visit it has been extinguished by prescription. However, the Bishop observed that the sacred visitation is a right and a duty inherent in the episcopal jurisdiction, in the exercise of which the Prelate enjoys full freedom. Moreover, since there are many churches and pious places in that vast Archdiocese, his predecessors, in examining each one, chose those which seemed to require pastoral vigilance, as can be seen from the reports of the sacred visitations to the Sacred Congregation of the Council. Therefore, the non-exercise of a merely facultative act cannot extinguish a positive right, and one which immediately derives from the very nature of episcopal jurisdiction.

[*Latin ed. p. 432*]

432. Concerning the Visitation: No one of sound mind will doubt that the matter is truly so in the case of acts which are purely facultative. Furthermore, it is established by law that prescription cannot be established in these acts; unless it can be shown that they were prohibited, and that the opposing party, within the proper time, acquiesced in the prohibition;

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Gloss., in L. Y. Commun., dividundo 6 de Annali praescript.; *De Luca de Benef., disc. 97 num. 13*; *Rota in millenis decisionibus, praesertim vero in Decis. 253 num. 8p. 3 recent.* - there - "Even if this wall has stood for a long time and for many years in that form, it can nevertheless be raised, because this is a matter of pure faculty, and is not subject to prescription, even if it has not been raised for a thousand years, unless there was a prior prohibition and legitimate acquiescence." Finally, in the condemned hypothesis that the petitioners are actually enjoying a pretended privilege, they are nevertheless unable to prevent the Archbishop from exercising the law granted to him by the Council of Trent, Session 7, Chapter 8, concerning reforms, as Apostolic Delegate for the Visitation, in performing the act of visitation in the Church of Saint Mary. With these things stated, the purpose was to determine whether the Church of Saint Mary is exempt from the jurisdiction and visitation of the Archbishop of Naples in this case.

RESOLUTION. The Sacred Congregation of the Council, after deliberation, on the 9th of September, 1882, decided to respond: Negatively, and furthermore.

FROM WHICH IT IS UNDERSTOOD:

I. The privilege of exemption does not include exemption from the visitation of the Ordinary; as is gathered from various resolutions of the Sacred Congregation, in which, while on one hand the privilege of exemption was not denied, on the other hand the right of the Bishop to visit was recognized.

II. Hence, a simple exemption of a Church or place.

[*Latin ed. p. 433*]

433. A dispensation granted for a visitation does not exempt it from the visitation of the Bishop, unless a special and explicit mention is made to the contrary; and in case of doubt as to whether a true exemption exists, the jurisdiction of the Bishop must prevail.

III. Since the right of visitation, belonging to the Bishops, has been established and confirmed by the Council of Trent, and many teach that no prescription can be established against it, therefore, contrary observance to infringe upon it would not be effective, even because a positive right cannot be lost through the non-exercise of a facultative act.

IV. Pastors are so firmly established in their right concerning the visitation of churches and pious places, that if they cannot visit a certain church by ordinary right, they can do so by delegated right, or as Apostolic Delegates, as decreed by the Council of Trent, Session 7, chapter 8, concerning reforms.

V. It is not certain that an exemption from the jurisdiction of the Bishop was granted, or that such a privilege was created through contrary obser-

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vance; therefore, the right of the Ordinary to visit the church of Saint Mary, with its adjoining chapel, remains intact.

(1) (1) Several declarations of the Holy Congregation are cited in this note to confirm what we have stated in the preceding arguments, and to provide a safer rule for similar cases. In Perugia, in the Visitation of August 26, 1851, four sodalities were discussed, each claiming various exemptions for themselves, including the claim that the regular canons attached to the church participated in the exemption of the regulars. Nevertheless, after certain doubts were raised as to whether the then-Bishop (now Pope Leo XIII) had a valid right to visit each of these sodalities, the Holy Congregation responded to all: "Affirmatively, and moreover." In Bergamo, on December 18, 1858, the following doubt was raised: "Does it consist of an 'exemption,' or rather, of a valid right" of the Bishop to visit the sodality of the Blessed Virgin Mary, "and to demand accounts from its officials in this case?" The Holy Congregation replied: "Negatively to the first part, affirmatively in all the others." *Acta, Tom. XV, fase. CT,XXVII*. In Bergamo, on December 18, 1858, Pope Nicholas V ordered, by a Bull of 1453, that no power should interfere with the administration of the Basilica of Saint Mary Major, which was built at the expense of the city, and in which a sodality was established under the title of Mercy. The following doubts were raised: "1° In what way, and how, does it consist of an 'exemption' of the church of Saint Mary Major, and of the sodality now called of Mercy, from the jurisdiction of the Bishop in this case? And, 2° In what way does it pertain to the Bishop to have the right to visit both the church and the sodality in this case?" The Most Reverend Fathers responded: "To 1. Affirmatively, by the Bull of Nicholas V; however, with the limitations established by the decrees of the Holy Council of Trent. To 2. Affirmatively, by delegated right." These conclusions are consistent with the resolutions of Bergamo, in the Visitation of January 30, 1856, and with the Visitation of the City of Castell, on July 18, 1857, and with many others.

[*Latin ed. p. 434*]

434 MARRIAGES. On December 16, 1882. In the year 1851, John and the widow Eleonora, with the consent of the parish priest, entered into marriage before the priest Ladislaus. But the nuptials seem to have been celebrated under an ill-omened star; for soon, disagreements and quarrels arose between the spouses; and as these increased day by day, John went to the civil court, accusing Eleonora of being excessively devoted to drink, and guilty of adultery, and requested a sentence of separation or legal divorce. Having made a vow of chastity, in order to be able to contract a second marriage lawfully, he appealed to the Supreme Pontiff; and, having explained that, fourteen years ago, he was compelled by his parents to marry the widow Eleonora, he requested that the Episcopal Consistory of Chełmno, since the Diocese is without a Prelate, might declare his marriage

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null, which he entered into under duress and compulsion. Upon receiving this suppliant petition, the Sacred Congregation of the Holy Office issued a decree on March 15, 1880*, ordering that the Most Holy [Father] benignly entrusted the matter to the Bishop of Chełmno, so that, with due observance of the proper procedures, he might investigate and judge the case concerning the nullity of the marriage between John and Eleonora, under the head of force and fear, up to a final sentence. The ecclesiastical court of Chełmno, having heard the confessions of both spouses and the testimonies of witnesses, declared that no force or fear was present on the part of the parents, and on March 15, 1881, issued a final sentence regarding the validity of the marriage. Considering himself aggrieved by this sentence, John, at the opportune time, interposed an appeal. The case was treated economically at the Sacred Congregation of the Holy Office, due to the poverty of the spouses, with a COMPENDIUM OF THE FACTS.

[*Latin ed. p. 435*]

MATRIMONIAL (435. The opinion of Theologians and Canonists, as well as the observations of the defender of the marriage bond; of which we give a summary below.)

SYNOPTIC SUMMARY.

The question was raised whether there was sufficient force and fear present to dissolve the marriage; and it was judged that there was. For, it is said, it is universally accepted that marriage can be dissolved by force and fear, which affect a constant man. The Salmaticenses, in Tractate 9, on marriage, chapter 9, point 1, number 18 and following, state: "The following conditions are assigned by the Doctors, for a grave fear to affect a constant man." The first condition is that the evil feared must be grave. The second is that one must not lightly believe that an evil threatens him, but rather that it is probable and reasonable. The third is that the one who instills fear must be able to carry out his threats. The fourth is that the one who instills fear must be accustomed to carry out his threats, either in the same kind of evil, or in another similar one. The fifth and final condition is that the one who is afraid must not be able to easily avert the impending evils, either by himself, or by a superior, or by friends.

With these premises, we must consider what John testified; for he said: "Unless you marry the widow Eleonora, my father said to me, you will not be called my son, and you will be disinherited from my house, and I will give you nothing, and I do not want to know anything more about you." In this testimony, the first and fifth conditions are clearly verified. It is certainly grave, as the Salmaticenses say, in the aforementioned passage, number 25: "It must be said that the fear of losing all possessions, or a greater part, or a certain great and notable thing, although it is not the

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greater part of possessions, is a grave fear, because, according to the best right, such a loss can terrify a constant man." John could not have provided for himself elsewhere if he were expelled from his father's house; for he had not yet completed his twentieth year, nor did he possess any art or trade.

[*Latin ed. p. 436*]

436. MARRIAGES. To the aforementioned circumstances, it must be added that the father employed violent means against his son, inflicting blows upon him, in order to compel him to enter into these marriages. Through this coercion, experienced by John through threats and blows, as he was on his way to the altar, the other three aforementioned conditions are confirmed. For the fact that the father was capable and powerful enough to carry out the threats is demonstrated by the severity and inhumanity of his actions; as stated by Bossius in *De Matrimonio*, chapter 12, paragraph 68. And Pontius, in *De Consensu ex Metu et Dolo*, book 4, chapter 5, paragraph 4, adds: "Serious threats and blows" are sufficient to instill great fear, much more so if they are accompanied by reverential fear. Therefore, since all concur in the case of the aforementioned conditions in the coercion of John, it is rightly held that there was sufficient fear in him to invalidate his marriage. Furthermore, this coercion is accompanied by a particular circumstance that is more opposed to freedom: for this marriage was entered into only three weeks after the coercion by the father; so that the son did not have the time or opportunity to free himself in any way from the paternal vexation. Hence, that freedom was lacking, which is required in marriage above all other contracts; and which must be undertaken with great deliberation and full counsel. But in order to carry this out properly, there was not sufficient time. Moreover, the quarrels, disputes, and hatreds that immediately followed the marriage reveal, more and more, the invincible aversion, a result of the aforementioned coercion in this marriage contract. Furthermore, the Consultor judged that it was sufficiently established in the matter of violence and fear, based on the sworn testimony of three witnesses, whose veracity the respective pastors did not doubt. Hence, Cosci in *De Sponsis*, chapter 8, paragraph 61 and following, states: "However, fear is not proven to invalidate a marriage by witnesses who do not state anything about the circumstances of the threats; for they must testify about the fear and about the fear of which they are speaking, otherwise they reveal nothing." Similarly, the Rota in decisions 334, part 2, paragraph 9-40, and 301, part 2, paragraph 24 and following, states: "Reverential fear, of which we are speaking, should not be taken into consideration, unless it is qualified..."

[*Latin ed. p. 437*]

MATRIMONII 437 > by threats and beatings, or by more serious circumstances. » From sworn testimonies, it is clear that John's fear was qualified

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by threats. Nor are the testimonies of three witnesses invalidated by the fact that some witnesses stated that they had never heard or seen such coercion: for these testimonies are equivalent to negative evidence. But it must not be forgotten that negative evidence has no weight in the presence of positive evidence. For we can say, as Sperelli states in decision 5, n. 88: « Indeed, the testimony of the parish priest and the witnesses proves that no one at that time induced the marriage act; but it does not exclude the possibility that fear preceded their arrival, thus responding in point Rota in decision 64, n. 25, paragraph 1, in more recent times. » Finally, it must be noted that, as Bossio states in chapter 344: « When the act is especially brought about by the father or parents, it is difficult to prove, because it is done secretly and within the domestic walls; therefore, to prove it, witnesses are not required, with all exceptions, except for those who are older, but those who would otherwise not be admitted are admitted... » The Consultor also inquired whether the marriage in question had been ratified by a long period of cohabitation; and he considered that it had not been ratified. For, in order for cohabitation to ratify a marriage, various conditions must be met by the Doctors, namely that the cohabitation must be long-lasting, voluntary, and that the fear must have ceased, so that there must be a true, even if virtual, consent, which is considered to be found in that free cohabitation, unless the contrary intention is present. This last condition is so essential that, although the others may be present, none of them are effective if this one is lacking, according to Alexander III in chapter 9 de Spons. « For marriage is contracted solely by consent... » With regard to this, it is required of the Doctors that those who have entered into the marriage must give new consent to cohabit maritally; and that the consent of the other party must also continue, so that they would still enter into marriage if they knew of its nullity. These conditions are entirely lacking in our case; nor can they be presumed: for, apart from John...

[*Latin ed. p. 438*]

438. The protestations of marriages, which state that someone, for example, has never considered Eleonora to be his wife, sufficiently demonstrate the inadequacy of the marital union itself. Indeed, from the very beginnings of these marriages, continuous quarrels, disagreements, and hatreds arose between the spouses. Hence, the marriage in question was not ratified through prolonged cohabitation. Furthermore, John and Eleonora were also required by new law to renew their consent before a priest and two witnesses, in order to validate their marriage, according to the form established by Trent. Because coercion, having been legally proven in the external forum, constitutes a public impediment. See Barbosa, *de offic. Episc.*, part 2, alleg. 32, n. 149: "According to current law, cohabitation cannot effect a marriage, but a new consent is required, and the form of the Council." From these and other considerations, the consultant concluded

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that the marriage suffers from nullity, and that it must be dissolved at the request of one party.

OPINION OF THE CANONIST. Since the sacred bond of marriage, once entered into, cannot be dissolved, it is provided by law that it is invalid or void *ab initio* if someone, compelled by fear, uttered the words of consent, even if he dissented in his mind, lacking the full freedom of consent due to the fear instilled. Indeed, as Coscius states in *De Separatione Conjugum*, book 1, chapter 8, full consent is required for the validity of marriage, involving total freedom and security... so that no one may, through fear, say that he loves what he hates; and therefore, the unfortunate consequences that often result from forced marriages follow. Hence, not only the fear mentioned applies to the constant man, but also reverential fear, provided it is qualified, or through insistent prayers and persuasions, which, when uttered by a person to whom one cannot resist, have the force of coercion; see Sánchez, *de matrim.*, book 4, disp. 7, n. 4 and following; or through explicit threats, repeated and frequent beatings, constant reprimands, and more serious circumstances. Nevertheless, the proofs for establishing the nullity of the marital bond, based on force and fear, must be conclusive, according to the consensus of all theologians and canonists; see Schmalzgrueber, *Ius can. univ.*, vol. 4, p. 1, tit. 1, n. 432.

[*Latin ed. p. 439*]

MATRIMONII 439 Ad matrimonium, de quo agitur, consultor censuit ipsius nullitatem haud probatam fuisse sufficienter, ex variis causis. Et quia assertiones Ioannis, postulantis declarationem nullitatis matrimonii, nullam fidem merentur, tum quia testimonium profert de seipso et in propriam utilitatem, tum quia eius testimonium falsitatibus et contradictionibus comitatur, ut ex actis processus facile evinci potest. Agitur enim de homine qui minatur relinquere religionem catholicam, ut in secta protestantica uxorem haereticam ducere valeat. Parochus autem retulit, Ioannem esse hominem garrulum, impium, vilem, et talem qui patriam, patrem fidemque denegare capax omnino sit, pauco pro argento. Nec affectum erga fidem eum movere ad quaerendam declarationem nullitatis matrimonii, ait Parochus idem. 2. Quia testes inducti ad probandum matrimonium contractum fuisse per vim et metum, haud concludenter probant, revera adfuisse vim et metum. Primus testis, qui nunc in aetate 43 annorum constitutus est, tresdecim annos natus erat quando anno 1851 matrimonium celebratum fuit. In prima sua depositione loquitur de morali coactione patris erga Ioannem, et adiecit nihil aliud possem dicere quoad actus violentiae. Postea addidit quod in die nuptiarum locum habuerunt physicae violentiae. Sed de hisce gravibus circumstantiis, neque Ioannes, neque alii duo testes mentionem faciunt. Secundus testis est de auditu, non de visu, et rogatus fuit non a iudice ecclesiastico, sed a iudice laico in tribunali civili. Tertius testis fuit Noverca Ioannis

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in aetate annorum 85 constituta, infirmae valetudinis et morti proxima, quando depositionem fecit, quae omni caret iuridica forma. Insuper hanc depositionem et relationem sibi a semetipso Ioannes procuravit. Brevibus ex hisce animadversionibus erui datum est, ait Canonista, quod testes adducti a Ioanne haud concludenter probant, ipsum inductum fuisse per vim et metum.

[*Latin ed. p. 440*]

440. Marriages unjustly compelled by the father, concerning the marriage with Eleonora. Indeed, it is alleged that the marriage was celebrated spontaneously and freely by John, if the assertions of the bride and the testimonies of other witnesses are to be believed. Although the assertions of the bride are not to be considered entirely reliable, since she testifies on her own behalf, they nevertheless seem worthy of credence, because they are corroborated by the testimonies of other witnesses, and because she has led a virtuous and tranquil life after the separation. It suffices, with respect to the witnesses, to mention the testimony of the priest who blessed John's marriage. This priest states: "It is entirely unknown to me that John was compelled by his father to enter into marriage with Eleonora; therefore, I am certain that he lied." Therefore, no violence occurred; and from the events that preceded the marriage, no nullity of the marriage can be demonstrated. Considering the events that followed the marriage, the consultant observed that John lived with his wife for a period of 24 years, or a long period of cohabitation. This long period of cohabitation should be considered to have ratified the marriage, even if it was entered into unjustly by the father through violence and fear. Coscius de Separat, in his *Theorica*, book 1, chapter 5, number 68, states: "Fear is excluded if, without any complaint, a long period of cohabitation has followed." Schmalzgrueber, in *Tractatus de Matrimonio*, volume 4, page 1, title 1, number 419, also states this. Who would say that John continued the cohabitation for 24 years out of fear? Furthermore, from the series of events, it is clear that John supported himself through his own industry and his own labor, and therefore, even the probable reason of violence and fear on the part of the father disappears. However, the Church Doctor, St. Alphonsus de Liguori, in *Tractatus de Matrimonio*, book 6, chapter 3, states: "The consent of the party who suffered fear, or of one who falsely consented, expressed through the conjugal act or through cohabitation, together with the prior consent of the other party, is sufficient to validate the marriage."

[*Latin ed. p. 441*]

MATRIMONIAL CANONS 441 concerning marriage. (1) Now, if an impediment arose from force and fear, it was concealed, since neither the priest who performed the marriage ceremony, nor John, who resided there by reason of his office as organist, knew of it. In our case, however, the

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conditions required by Schmalzgrueber, loc. cit., no. 421, are also present; namely, that the one who ratifies the marriage knows that the marriage previously contracted is invalid. John admits that he knew of the invalidity of the marriage, yet he cohabited with her for 24 years. There is a long-standing cohabitation, which was entirely voluntary, so that even the cause of fear ceased. With these premises, the Consultant concluded that there should be no deviation from the judgment rendered in the first instance, in favor of the sacred bond. OBSERVATIONS OF THE DEFENDER OF THE SACRED BOND. He said, "Since civil law prohibits any authority, outside of civil tribunals, from receiving an oath, it is necessary to recognize various irregularities in the process of instruction. However, whatever may be the case with these irregularities, and whether some of them need to be remedied, the defender of the sacred bond stated that he adheres to the opinion of the Canonist, who voted in favor of the validity of the marriage. Therefore, the defender embraced the judgment that neither was there sufficient fear, nor, if it was present, was its existence proven. He said that the second part had been wisely disputed by the Canonist, and therefore it remains only for him to demonstrate that the fear and its cause were lacking. By the best of law, force and fear are numbered among the impediments that invalidate marriage; but not every fear invalidates marriage, but only that which Schmalzgrueber describes in *Iuris Canonici*, part 5, title 40, no. 2: namely, a grave fear, which is said to be just and probable, and which falls upon a steadfast man, or which is such that it can remove a man from his purpose, even if he is otherwise strong and steadfast. Hence, all doctors enumerate certain conditions that determine the fear itself, both in its gravity and in its effectiveness, so that from (1) See *Recueil*, Vol. XI, *harm. epil.*, page 338.

[*Latin ed. p. 442*]

442. It can be said that the marriage was grave, just, and involved a man of constant mind. These conditions are explained by Schmalzgrueber in the cited passage, no. 3; and by Sánchez de Matrim, book 4, section 1, no. 19. Now, consider: did a grave evil threaten John, as the first condition requires? What did he fear? It is certain that the threats made against him by his father, which we have mentioned above, were not of the kind that the canons require. For, it is not a question of a girl who has been cast out from her home and does not know where to find refuge; but rather of a young man who is about to complete his twentieth year. It is a young man who is not lacking in patrons, especially among the priests, to whom he and his father "minister by playing the organ." And although the young man had been abandoned by his father, he was able to provide for himself, as happened shortly after the marriage, because he was already serving as an organist in the parish church, which blessed his marriage. Therefore, he could not perish from hunger. But the father added that he would give him

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nothing from the family's assets. In the first place, from the proceedings, it is known what the father's condition was; but it does not appear that he possessed a large fortune, from which it is said that he lives by his work as an organist. Therefore, what goods could John have feared losing, so that, in the hope of obtaining them, he would enter into a detestable and permanent bond against his will? Furthermore, the father could not, according to the civil law, disinherit his son without a legitimate cause expressly stated in law. But if we are speaking of the fear of losing free property, then, according to the doctors, this does not constitute a fear that falls upon a man of constant mind, because, with regard to those things, the son has no right to the property, and it is the father's right to freely dispose of them. Therefore, this kind of fear is reduced to the fear of losing profit, which does not constitute the required fear; Pontius de Matrim, book 4, chapter 5, no. 10; Sánchez de Matrim, part 4, section 5, no. 28. Moreover, even admitting the gravity of the evils, it is not known from the proceedings whether the father was mild or stubborn, and whether he was accustomed to carrying out his threats, or rather whether he was a boastful man and easily abandoned his anger. But what the father added about threats involving beatings, as some witness testified, was not properly proven; and this was sufficiently demonstrated by the Canonist in his opinion.

[*Latin ed. p. 443*]

MATRIMONII 443. Verumtamen, ait defensor, cum graves saevitias et gravia mala a patre ei minitata fuisse, adhuc quaeri potest, num omnia haec inevitabilia essent? Nullumne medium aderat, quo agens pater temperari posset; eumque adduci ad saniorem mentem? Hoc requirunt canones: qui aperte loquuntur, quaecumque mala, etiam gravissima, exulare vel inefficacia esse ad metum constituendum, quando ad consanguineos, ad amicos, ad probos viros facilis est recursus, ut qui ea minitatur, animum mutandum ab eis suadeatur. Aliter imputetur ei qui facile potuerit vitare malum, si timore illius aliquid egit. In casu aderant Presbyteri, patri atque Ioanni noti et amici, ad quos facile erat recurrere. Ioannes haud erat timida puella, quae domi restricta animo et potestate carebat coram eisdem sistere, eosque adprecari, ut patrem a proposito dimoverent, et in filium non esse inseviendum hortarentur. Omnia omisit Ioannes. Ast orator recursum facere ad metum reverentiae videtur quando ait: "quum meum patrem vere amarem, eius minis cedere debebam." Inficiari nequit, doctores ad calculum ponere reverentiam erga patrem, sed etiam quaedam mala evitanda adesse requirere. Ita Sánchez, aliis praeteritis, in lib. 4 disp. 6 n. 7, ultima sententia quam multo verius rem puto, docet, solum metum reverentialem, nisi minae aut verbera, aut alius metus gravis illis adiungatur, non cadere in virum constantem, ac proinde nec annullare matrimonium. Item Reiffenstuel lib. 3 tit. 41 de reg. et trans. n. 165. Hisce in iure statutis, facile ex antea disputatis, resultat, non utiliter

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invocari huiusmodi metum in casu. Sed admisso etiam uti sufficienti nudo metu reverentiali, requiritur ut agatur de filio benemorato, optimae indolis, et non communi amore erga parentes fragrante. Ioannes autem hoc amore affici erga patrem dici videtur non posse; si attendatur quod ipse rogatus deposuerit apud Consistorium Mineo, sese habuisse patrem uti praecipuam causam.

[*Latin ed. p. 444*]

f. 444 of the marriage, and therefore, he had not cared to know whether he was alive or dead. This deposition was made six months prior to the father's death. But if, after the marriage, he so hated and despised his father that he did not even bother to find out if he was still alive, can it be said that he was naturally endowed with such a disposition before, that he would not have displeased his father by subjecting himself to such a sacrifice through his love? Furthermore, when we are dealing with a marriage, the cause of the abomination must necessarily be present, so that it can be demonstrated that fear and dread were present. But what could that cause be in this case? Perhaps the love of chastity? But who can seriously assert that? Perhaps the inopportune timing, as if he were more concerned with something else? But he was already capable of exercising the ministry; and it was his nature to pursue that art, to which he devoted himself, even as a married man, especially since he could increase his resources through the goods of his wife. With all of this established, the purpose was to determine whether the judgment of the Ecclesiastical Court of Chełmno should be confirmed or overturned in this case.

RESOLUTION. After deliberation, the Sacred Congregation decided on December 16, 1882, to respond: The judgment should be confirmed.

FROM WHICH IT IS UNDERSTOOD:

I. Even from Saint Thomas, in the 4th distinction, 29th question, unity, article 3, question 1, in the body, a marriage begun with a grave and unjust fear has no effect in either law and is invalid.

II. Nevertheless, we must stand by the validity of the marriage, insofar as, after considering everything, there remains a doubt as to whether the fear unjustly instilled in the contracting of the marriage is to be considered grave or not; or, even if it was grave, whether it can be conclusively proven.

III. Indeed, besides the fact that, when a contract is celebrated, possession, or presumption, stands as evidence of its validity, it also seems to be required by both the reverence due to the sacrament, and by the interests of the republic, and the upbringing of children, which require that marriages

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not be dissolved.

[*Latin ed. p. 445*]

445. MARRIAGE, IV. It is apparent that either no fear or dread was present concerning the marriage, or, if it was present, it was not duly proven. V. When, concerning the fear or dread experienced by the patient or the one initiating the marriage, the matter is difficult to prove, indications and conjectures, and even relatives, are admitted as evidence, so that moral certainty may be established as to whether the fear, affecting a constant man, has been instilled. VI. In the matter, the existence of fear, instilled concerning the marriage, has not been conclusively proven, neither through conjectures or indications, nor through relatives or outside witnesses. The response concerns the appropriate time for observing the natural fast and for reciting the divine office. November 29, 1882. Under this date, the Tribunal. The following question was proposed to the Apostolic Penitentiary: "Whether, when clocks are used, adjusted to the mean time, it is permissible to observe both the time for reciting the divine office and for observing the natural fast; or whether one ought, or at least may, use the true time?" The Sacred Penitentiary responded: "The faithful, in observing the natural fast and in reciting the divine office, may follow the mean time, but are not obliged to do so."

[*Latin ed. p. 446*]

446 FROM 3. THE CONGREGATION OF RITES, NEWARK. It was determined in the Diocese of Newark that, above the altars, lights from gas should be lit, in addition to candles made of wax, in order to obtain a greater brightness. The present Bishop of Newark, however, having doubts as to whether this is permissible, inquired of the Sacred Congregation of Rites: Is it permissible, besides the candles made of wax, to have lighting from gas above the altar, or must the aforementioned practice be prohibited? The Sacred Congregation itself, after considering the matter, responded in writing as follows: To the first part, the answer is negative; to the second part, the answer is affirmative. And thus it was declared and written. On March 8, 1879. This is found in the Acts and Records of the Secretariat of the Sacred Congregation of Rites. In witness whereof, etc. From the same Secretariat, on this day, April 13, 1883. For the Reverend Father LAURENTIUS SALVATI, S.R.C., Secretary, IOANNES C[NICUS] PONZI, Substitute. RAVENNA. The Master of Sacred Ceremonies of the Metropolitan Church of Ravenna, with the consent of his Most Reverend Archbishop, humbly requested a solution to the following doubts from the Sacred Congregation of Rites: In certain Cathedral and Collegiate Churches, on the feast of Saint Martial and on the days of Rogation, after the Non, a procession takes place, during which the hymns of the Saints are sung. After these things are completed, one of the Beneficiaries, or Chaplains, sings

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the Mass of Rogation, in which the Cross of the Chapter stands at the side of the Evangelist. After the Mass, the Chapter and the clergy return to the Sacristy with the Acolyte, without the Cross, as is done on weekdays. The question is: I. Can the Cross of the Chapter be placed at the side of the Evangelist in the Mass of Rogation, which is to be sung by a Beneficiary, or Chaplain, as is done in canonical Masses? II. After the Mass is completed, is it necessary to return to the Sacristy in a processional manner with the Cross? The Sacred Congregation itself, after hearing the aforementioned Secretary, and after considering the opinion of another of the Masters of Ceremonies of the Apostolic See, decided to respond in writing as follows: I. To the first question: No, according to the custom of the Archbasilica of the Lateran. II. Regarding the first: It is provided. And thus it was declared and written on January 5, 1883. D. Cardinal BARTOLINIUS, S.R.C., Prefect. Laurentius Salvati, S.R.C., Secretary.

[*Latin ed. p. 447*]

APPENDIX VI. Concerning the commemoration of the birth of Saint Raphael on the secular feast day. Just as the secular feasts, when celebrated with injustice to commemorate the birth of Saint Michael, could not have brought honor to that man, nor would the favor and patronage of the Angels have extended to him; so too, it will not be fitting to celebrate the memory of Saint Raphael on these Pontifical days, for the same reason, as history testifies, that he did not neglect anything. Indeed, for the very same reason, we owe a tribute to RAPHAEL URBINATE. (Book IX, p. 13.) At that time, we presented to Pope Michael the Angel letters from Paul, which, although published, are not widely available, through which the eternal monument to the Angel Michael, and to Pope Paul himself, is demanded. Now, Leo X, who preceded Paul in the same Roman century, is known to have excelled in all arts, not only in the art of painting, but also as an architect, and he was held in such high regard that we rightly give him the letters, through which he confirmed the construction of the temple of the Prince of the Apostles in Rome, which he began, and through which he demonstrated his devotion to the study of the arts and his solicitude for the divine religion. Although these letters were committed to him, and he abundantly demonstrated this through his actions; and although Peter Bernini wrote to us in the name of Leo X, concerning the magnificent construction of that temple, and although we are not the ones who will see it built with the utmost speed, but rather certain others today, nevertheless, we consider him our master in literature and history, and we make a grant of three hundred gold coins annually to be secured for his burial, which are provided by our funds and are brought to us, so that, in truth, Saint

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Raphael...

[*Latin ed. p. 448*]

448 APPENDIX VI. To the Masters: From whom I obtain this small stipend, for the edification of your souls, I request that, for the time being, you provide portions [of materials], and I order that, whenever you request it, without delay, you send me, both those from Rome and those from outside of Rome, each month, marble and all kinds of stone. And I urge you to undertake the care of these materials, so that, by exercising yourself in this work, you may, as I believe is the case with your reputation, acquire skills that are suitable for the construction of the church in Fano, and that you may purchase, for me, during your youth, good foundations for those young men, of mediocre talents, of good name, whom it is necessary to provide with hope, so that, through our paternal affection for you, they may, after this, extract from the earth, even the most distant places in the entire world, the finest and most sacred stones, within the space that I have indicated, so that they may be assigned to you, as prefect of that place and of those things, and so that they may demonstrate that they have rendered due honor to the Principal of the Apostles. Let this be made certain by a three-day period of prayer.

Given on the first of August, in the second year. Rome (1514).

RAPHAEL OF URBINO. (Book X, p. 52.)

LEO, POPE X.

Since it is of the greatest importance that, for the construction of the church of the Princes of the Apostles in Rome, a supply of marble and stone, with which they abound, be provided, and that whatever is valuable for the cultivation of literature and the elegance of the Roman language be procured, and since these things are cut from the marble by sculptors, so that inscriptions may be erased, I order that all such marble be brought from afar, and that, in order that the art of quarrying marble may be available to those who use the facilities of the city, and that, without the permission of you, who carry out these tasks at my command, anyone who dares to cut or carve any stone, whether from Rome or from nearby, shall be subjected to the same penalty that I impose on those who dare to do so.

Given on the sixth of September, in the third year. Rome (1515).

[*Latin ed. p. 449*]

449. BRIEF, by which various Indulgences are granted to the Sodalitas called "Adoratione Reparatrice." POPE LEO XIII. To this end, in these times, while the Christian world suffers so much and witnesses such crimes and such utterly impious acts perpetrated daily by men, saturated with bitterness, it is our concern and solicitude for the good, who strive

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with all their strength to repair the injuries done to the Lord with reckless audacity. Therefore, we are grateful and welcome the pious consent of the faithful, who, supporting this Sodalitas, have placed among their many cares and thoughts the constant offering of prayers to God in reparation, as well as the promotion of divine worship and the care for the eternal salvation of souls. This Sodalitas, which we believe to be of great importance for the faithful who diligently work in the vineyard of the Lord, bears the title "Adoratione Reparatrice" of the Catholic nations, and is canonically established in this our city; for from this fruitful Institute, which extends throughout the entire world, distant and separated peoples are united in a common communion of prayers. For, especially with the aim of giving force to the universal Reparation, continuous prayers of forty hours are held perpetually in the city. Those faithful who are devoted to this pious work, whatever nation they may have come from, if they are praying in the city, are to stand for a certain time each week, in the churches of the city, before the forty-hour exposition of the Blessed Sacrament, for a specific hour; if, however, they live outside the city, they are to visit the church in which the Most Holy Sacrament of the Eucharist is reserved, and likewise, according to the statutes of the Sodalitas, to pray for a certain time each week, for a specific hour. Now, since the most devoted son, Father Anthony Brugidou, the director of this pious work, has humbly made supplications to us, that we might deign to increase the charitable works and the pious dispensations which the Most High has entrusted to this Institute, we...

[*Latin ed. p. 450*]

450 "The good of all Christendom throughout the world yields, as far as it is in our power, to the Lord," we have benignly judged. Since these things are so, trusting in the mercy of Almighty God and the authority of the Most Blessed Pope Peter and Paul, and for the pious purpose of benefiting all and each of the faithful living outside the City, who, according to the statutes of the aforementioned Sodality, have devoutly visited any church in their respective regions where the Sacrament is reserved, and have prayed before it for approximately one hour, provided that they have duly performed all the other works of piety commanded by the Lord through the intermediary [of the Sodality], so that, daily, they may obtain all and each of the Indulgences, remissions of sins, and relaxations of penances, which they would obtain if they were present in the churches for the prayer of twenty hours on those same days, we grant, by our Apostolic authority, with the force of the present, all and each of these. Furthermore, in our City, the center of the Institute, to the members of the Sodality who are present now and for the time being, provided that they are penitent, confessed, and strengthened by the Sacraments, they shall, through the statutes of the Sodality, on the day designated for them each week, or on another day, if they have

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been legitimately hindered, and having duly performed the pious work of Adoration in the churches of the City where the prayer of twenty hours is said, in addition to the Indulgences of twenty hours, all and each of them, on one day of their choosing each year, may also, with the merciful grace of God, obtain a Plenary Indulgence, whatever may be. All of the above is valid in the present and in all future times. We decree that copies or printed examples of the present document, signed by the hand of a public Notary and sealed with the seal of a person constituted in ecclesiastical dignity, shall have the same validity as if the original document were exhibited or shown. Given at Rome, at St. Peter's, under the Fisherman's Ring, on the 5th day of March, in the year 1833, in the sixth year of Our Pontificate. [Signed:] His Eminence Cardinal MERTZ.

[*Latin ed. p. 451*]

451 LETTERS to the President of the Catholic Society of Hungary. LEO XIII. Beloved Son, greetings and the Apostolic blessing. The most grateful testimonies of your unwavering faith and excellent intentions have reached Us through the obedient letters which you sent Us after the meeting held in Orosháza. Indeed, it could not but please Us to hear of the beginnings and the happy progress of the society, which, under your leadership and auspices, is diligently working to promote ecclesiastical authority and the Catholic cause in Hungary, and to care for the welfare of its neighbors. Above all, We were delighted to learn of what was decreed and established by you in the most recent elections, namely that the youth be instructed according to sound doctrine, and that salutary writings, which can greatly contribute to preserving and safeguarding the integrity of the faith, be disseminated through periodicals and books. And nothing could be more pleasing to Us, considering the ever-increasing boldness of the wicked and all those who seek to corrupt the faith, than to see, on the contrary, the zeal of the good aroused, who strive eagerly to repair the damage done to religion, to defend the cause of truth, and to promote the worship of piety. We firmly trust and are confident that you will diligently pursue the plans and objectives you have undertaken, for the honor of the Church and your homeland, for the support and consolation of the Holy Priests, and for the great benefit of all the faithful in Hungary. Meanwhile, We turn our prayers to Almighty God, that He may look favorably upon your group, granting it fortune and support: may He direct your steps, illuminate your minds, strengthen your hands, so that you may successfully accomplish your work, and rejoice in His mercy. Finally, We bestow upon you all and each one, in the Lord, Our paternal charity and the Apostolic blessing, and We anticipate the abundance of heavenly gifts. Given in Rome, at St. Peter's, on this 8th day of March, in the sixth year of Our Pontificate. LEO XIII. In

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the year 1883. The Pope.

[*Latin ed. p. 452*]

452 FROM THE HOLY CONGREGATION OF THE COUNCIL FOR DISPENSATIONS, regarding the defect of birth, dated 9 September 1882. Through summary petitions.

COMPENDIUM OF THE CASE. Francis, born out of wedlock, through the ministry of a certain priest, now deceased, who had successfully completed his theological studies, desiring to dedicate himself to the ecclesiastical life, was promoted by the Ordinary to the tonsure and the minor orders. But now wishing to ascend to the higher orders, in order to fulfill his desire, he humbly implores the Most Holy Prince, through a petition presented, to deign to grant the benefit of a dispensation, concerning the impediment of irregularity. The Ordinary, adding his favorable vote to the prayer of the petitioner, presented several reasons for obtaining the dispensation, concerning the defect of birth, and finally, he bore witness to the considerable intelligence and good character of Francis.

SYNOPTIC DISCUSSION. THE GRACE SEEMS TO BE DENIED. All illegitimate persons must be kept away from receiving the order, until the evidence is overwhelming, as stated in Cap. Inter dilectos de excess, praelat. And it has been wisely established that, in most cases, this should be done by three [persons]. Firstly, because of the prerogative or excellence and dignity of the Order: therefore, it is considered unworthy to confer it upon persons so base and

[*Latin ed. p. 453*]

453. Dispensations which have acquired a mark of infamy. Secondly, because of the detestation and abhorrence of the paternal crime, which is punished in the son, so that, through this, the father himself may be punished, argument I. These indeed, §. fin. ff., concerning that which, because of fear, and 6, verse 10, of the Heretics. Thirdly, on account of paternal incontinence, which is rightly feared in the son, argument Com. si gens dist. 56, because, according to the common saying: often the son is like the father. And it is not easily dispensed with, especially if there is a danger of public scandal, or when it is necessary to dispense with one who, as in this case, is born of persons between whom marriage could not lawfully exist. Indeed, it is all the more difficult to grant a dispensation to illegitimate children, the more shameful their origin is, according to what is handed down by St. Thomas in 4 Sentences, dist. 25, question 2, article 1, question 3, where he says: "Those who are constituted in a certain dignity before others are required to have a certain clarity," not of the sacrament, but of the "precept," so that they may be adorned with good reputation and good morals, and not publicly repentant. And because the clarity of the person is obscured by a vicious origin, therefore, those born of an illegitimate origin

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are repelled from the reception of orders, unless a dispensation is granted to them; and the more difficult the dispensation is, the more shameful their origin is. Therefore, in this case, since the origin of the cleric Francis is to be considered the most shameful, since he is sometimes born of a sacrilegious union; and since it is also prudent to fear that a public scandal may arise from a dispensation, it seems prudent to conclude that his prayers cannot be accepted. On the other hand, it must be noted that, although there is no doubt about the truth of the matter, it is the case that the Church often grants a requested dispensation, whenever there are reasonable causes that suggest that it should be granted, "but the reasons for which the Holy See often grants dispensations concerning irregularities, are primarily the evident benefit to the Church," and, with the orator's good morals, the granting of his grace seems most fitting.

[*Latin ed. p. 454*]

454 Joined with the ingenuity of the dispensation. Furthermore, it seems impossible to doubt that such reasonable causes are present in the matter we are considering. Indeed, the benefit to the Church is evident from the information provided by the Bishop, who states that there is a small and inadequate number of priests existing in his diocese among the reasons for requesting the dispensation. Regarding the orator's proven morals, the Bishop states: "As for his morals, it is likewise hoped that he will always strive for improvement, and will not bring shame to the clerical state." Finally, the Bishop reported on the orator's character, stating that the young man successfully completed his theological studies; and therefore, he recommends him to the Apostolic See, so that he may be graciously dispensed from all impediments to receiving the orders. The favorable opinion of the Bishop is highly valued by the Sacred Congregation, as numerous examples attest. Indeed, the danger of public scandal may be averted by granting such a dispensation; for the sacrilegious origin of the cleric is not so widely known that a public scandal, which is feared, might actually occur. Indeed, the Bishop states that, in the common opinion of people, he was considered a legitimate son, although, "after the death of his adoptive father, it became known to some" of his tainted origin; so that "this sacrilegious origin of John is not entirely hidden." Therefore, on the one hand, the danger of public scandal is greatly removed; on the other hand, since reasonable causes exist that suggest that a dispensation should be granted due to the defect of birth, it seems that the orator's prayers should be granted. And this especially because it is known that such graces have been granted by the Sacred Congregation on several occasions, as can be seen from the Decrees of Neocastria and Catane, of August 8, 1847. After careful consideration of these matters, the question was raised as to how the orator's prayers should be answered. RESOLUTION. The Sacred Congregation, having considered the matter, responded on September 9, 1882: For the granting of the dispen-

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sation and habilitation to sus-

[*Latin ed. p. 455*]

DISPENSATIONIS h 5 f) The sacred orders, up to and including the presbyterate, are to be conferred; but it is to be so arranged that, if it can be conveniently done, the cleric, after ordination, should be transferred to some part of the diocese where such [a defect] is entirely unknown, as was stated with the Most Holy [See]. I. The Church desires the ministry of clerics to be useful and honorable; therefore, she excludes certain persons from the ministry, either in one respect or in both, and considers them to be irregular. II. It cannot be doubted that those who are ordained are constituted in a dignity superior to others; therefore, even those born illegitimately are excluded from receiving the orders, because the vicious origin of their birth tarnishes the clarity [of the order] in the estimation of men (1). III. Those born illegitimately, who are admitted to the sacred orders by Apostolic dispensation, are to be ordered, as much as possible, to exercise the sacred ministry in places where such [a defect] is unknown, "so that" the memory of the incontinence of [their] father may be kept as far as possible from places consecrated to God; Council of Trent, Session 25, chapter 15 (2). (1) Ivo of Chartres, in his preface, states: "Some Most Holy Popes have taught that the sons of priests should not be admitted to the priesthood, not because the acceptance of persons with God is of any importance, or because nature, which is the mother of all and is equal to all, can be blamed by anyone, or because a son should be condemned for the wickedness of his father... but to restrain the incontinence of some priests, or to safeguard the continence of others more safely." (2) From the interpretation of the Constitution *Circa* [regarding] the denial to an illegitimate son of any rights in the Church in which his father ministered. Regarding this matter, on July 4, 1645, in Oriana, it was asked: "Can the illegitimate son of a deceased parish priest hear confessions in the church in which his father was a parish priest, or at least is there a place for dispensation?" The Sacred Congregation responded: "It is not possible." All of these things proceed according to common law, unless the Apostolic See has judged it fitting to grant a dispensation for grave and just reasons, and which appear good to itself, as is evident from the case in question.

[*Latin ed. p. 456*]

456 FLORENCE, PENSIONS. On December 16, 1882, a SUMMARY OF THE CASE. The Archbishop of Florence, on December 4, 1880, in the Sacred Congregation of the Council, stated that certain pensions, imposed by the decree of Archbishop Martin, in the year 1782, upon the parish priest of Saint Mary of Fagna, with the favor of eight parish priests, had been regularly paid. However, the most recent parish priest, the Prelate added, refused to pay these same pensions, citing the following reasons:

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that the Ordinary of Florence did not have the right to impose a perpetual pension, and that no mention is made of Apostolic faculties in his decree. When questioned about his decision, the Archbishop said: "I sought in the archives of the Chancery documents by which this matter might be clarified; and although no pontifical rescript was found, a petition to the Most Holy Pope was discovered, requesting the necessary faculties. Therefore, if we compare this fact with the words of the Archbishop's decree – by our ordinary authority and by any other more suitable means – it may be presumed that the aforementioned Archbishop did indeed obtain Apostolic faculties, but that he was unable to explicitly mention them in the decree, due to the circumstances of the time. For it is no secret that the Florentine and other churches of Tuscany were subjected to a grievous servitude from the time of Peter Leopold, the Grand Duke." A SYNOPTIC DISCUSSION OF THE RIGHTS OF THE EIGHT PARISH PRIESTS. Whether the matter is considered in a possessory or a petitionary manner, it always follows that the parish priest is obligated to pay the pensions. Indeed, with regard to a possessory judgment, since the parish priest of Saint Mary from the year 1782...

[*Latin ed. p. 457*]

FLORENCE has consistently paid these pensions up to the year 1880, and therefore, the aforementioned Parish Priests have always received them without any disturbance; consequently, no reason whatsoever can be conceived by which they might suddenly be deprived of this ancient and peaceful right. It appears that no judgment can be rendered in the present case other than a possessory one. For, since the matter concerns an ancient payment, which they themselves have received from their predecessors, and which has been granted to them along with the parochial benefice, the issue is not about claiming something, but about maintaining the existing possession. However, even if the matter were to be disputed in a legal proceeding, the right of the Parish Priests would not waver. Indeed, there is no doubt that Archbishop Martin, endowed with Apostolic authority, established these pensions. For, from the copy of the petition presented to the Roman Pontiff, it is clear that, noting that the offering to the Church of St. Mary amounted to a very large sum of 548 scudi at that time, after deducting taxes, while the offerings to eight other churches were very small, he had the intention of finding a way to assist the rectors of these churches. Nor does it matter whether any trace of the granted Apostolic permission is found, or whether the Archbishop omitted to expressly mention it in his decree. Regarding the first objection, any difficulty disappears if one considers that the time elapsed from the date the pension was imposed to our present time is a period of one hundred years. Moreover, if a lapse of 30 years has such force as to create a strong presumption of Apostolic approval, then it is all the more certain

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that such approval was maintained in this case, since the pension has been consistently paid not for a period of 30 years, but for a period of 100 years. As for the second objection, it appears from the history of the imposition of these pensions that the Archbishop had a very serious reason for acting in this way. Indeed, Materassi himself states that when the Republic of Florence had lost all its possessions, the Ristorante Ma-

[*Latin ed. p. 458*]

In FLORENTINA, Chiavelli, having been subjected to a fine for sedition, also acquired the right of patronage over the aforementioned parish, along with Marcinone Rangoni Machiavelli. In the year 1780, through a certain agreement entered into between the aforementioned Marquis and the Grand Duke of Hetruria, the former sent a representative, and the latter gave his consent that the parish should be burdened with certain pensions. Consequently, in July of the year 1781, it was declared to the Vicario Capitulare of the Church of Florentina, that the will of the Grand Duke was that one-third of the income of this benefice should be used to assist five or six churches more in need in the region commonly known as Mugello; and that he was empowered to indicate which churches these should be. Therefore, since the Grand Duke was involved in this matter, it is easily understood why mention of the obtained authority was not made; lest the zeal of the Grand Duke be aroused, who regarded papal authority as hostile to him. From what has been said so far, it is quite clear that these pensions were legitimately established; and Materassi unjustly attempts to be excused from fulfilling this obligation. And the parish priest himself is laboring in vain to make these pensions perpetual, because it is not expressly stated in the decree; for to the reader, the words of the decree clearly show that the Archbishop Martini declared the same through equivalent words. From these words of the decree, everyone can easily perceive that the reason why the Archbishop was moved to impose these pensions was twofold: namely, the poverty in which those eight parishes were found, and the excess of income which the parish of St. Mary of Fagna enjoyed. Therefore, such pensions should continue as long as the aforementioned parishes are found in the same miserable condition, and until the income of the parish is sufficient to support such pensions. Furthermore, if it should happen that the income of the parish is still considerable, and that the rectors of the aforementioned churches do not have a suitable and sufficient provision, then all things considered, it would also be incumbent upon the current parish priest to pay the pensions.

[*Latin ed. p. 459*]

FLORENTINA 4o9. Indeed, although some reason might have existed for the Parish of Saint Mary to have been aided at one time, nevertheless, at the present time, by the force of prescription, it ought to be declared to

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have been extinguished and annulled; provided that all the requirements are presented by which prescription is to be valid, so that it may be able to exercise its force. Certainly, there is no lack of a long duration of time; for, within a space of 40 years, even immovable ecclesiastical possessions are prescribed, as is stated in chapter 4; in the chapter addressed to the ears, 6; in chapter Illud, 8, and in chapter Quia, when judging concerning prescription. In this case, however, a prescription of more then a hundred years is held, since from the year 1782 until the year 1880, such pensions were steadfastly paid: which period of time would be sufficient to prescribe the immovable goods of the Roman Church itself. Nor is a just title lacking. For, in the first place, it cannot be understood how the Parish of Saint Mary could have continuously paid these pensions without any difficulty, unless they were bound by some title and obligation to do so. For, when it comes to payment, men are not often inclined to pay, unless they first know the title and the reason. Secondly, a hundred-year prescription, as is stated in the text, by its very nature possesses the force of a true and legitimate title and privilege; and therefore, he who possesses it can allege a better title than any in the world, as is stated in summa 2 ff. 7 concerning water, and the prevention of rainwater, I. this law, 3 §. 4 ff. concerning daily water, d. concerning certain significations of words, and in the document of Saint Bota in Praenestina, dated March 23, 1819, paragraph 3, before Marco - there - « He who enjoys a possession by a hundred-year prescription, is certainly supported by some better and more powerful title, and by law. Do you wish a pact? Do you wish a privilege? All these, and if you desire anything else, are presumed to be from a hundred-year possession. » This very sentiment is in agreement with the decision of the Sacred Congregation in the case of Spoletana, concerning annual payments, dated April 24, 1875 (1). Therefore, whatever aspect the question is considered from, it is clear that the Parish of Saint Mary has the right to demand these pensions. THE RIGHTS OF THE PARISH OF SAINT MARY. On the other hand, the parish priest of the parish of Saint Mary in Fagna alleges that... (1) You have this question referred to in Volume IX, page 132, har, ephem.

[*Latin ed. p. 460*]

460 In FLORENTINA, the obligation to pay these pensions is questionable, because they were not imposed by the Apostolic See, but by the Archbishop Martini, supported by his ordinary authority. Furthermore, the doctors unanimously teach that a Bishop cannot, by his ordinary authority, impose pensions on parochial benefices. Among these, Fagnanus, in his work *Commentaria in III librum Decretalium Innocentii I*, c. 1, Cap. 26 *de praebend. et dignitatibus*, supports this theory with two resolutions of the Sacred Congregation, from which it is clearly evident that a Bishop, without the approval of the Holy See, cannot impose pensions on churches to which the care of souls is attached. Given these legal principles, and

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considering the fact that the Archbishop himself reserved these pensions for the parish, it is as if a stream flows into a vessel that lacks any strength to contain it, rendering these pensions devoid of any real force. Indeed, the decree itself contains these words: "desiring, as far as is in us... therefore, by our ordinary authority..." These words clearly indicate that the authority used was not that of the Apostolic See. Moreover, even if we were to concede, though it is not granted, that the Archbishop Martini acted as a delegate of the Apostolic See in this matter, nevertheless, the parish priest maintains that he is not obligated to satisfy these pensions, because they are not perpetual. He argues that this can be demonstrated primarily from the very conclusion of the Archbishop's decree, which states that the parish priest Michael Pini must pay these pensions as long as he retains the said church. Regarding this matter, if the burden of these pensions did not cease with the life of the parish priest Pini, it would be pointless to say, "as long as he retains the said church." Furthermore, he observes that if these pensions had been imposed as perpetual, a mortgage would have had to be recorded for this purpose; for by the imposition of a real pension, a special mortgage is created on the fruits of the benefice, in favor of the recipient of the pension (Fagnanus, *de Praeb. et Dignit.*, vol. II and III, p. 110, n. 58). But such a mortgage was never recorded for this reason.

[*Latin ed. p. 461*]

FLORENCE, 461, concerning the parish of Saint Mary. It could not be registered, because the decree of the Ordinary was not sufficient for the mortgage to be registered. Furthermore, the perpetuity of the pensions is not better demonstrated by saying that they were imposed with the favor of the Churches, for the Ordinary stated that he acted in this way so that he would not have to renew so many decrees, so often as any of the eight pastors would die, or as the parish would send news to the aforementioned pastor Pini, as long as he retained the aforementioned church. Moreover, no mention is made of these pensions, neither when the advocate received the institution, nor in the Archdiocesan court, nor when a meeting was convened by public edicts. All of this was omitted so that such pensions would endure beyond the life of Pastor Pini. To the objection that the pastors would not have accepted these pensions unless they were truly perpetual, Materassi replied that this happened because they believed that they had been imposed by a competent authority, so that they would be paid perpetually, as the advocate's predecessor asserted, who is still living. Therefore, it seems that Pini's successors, ignorant of the force of the Archdiocesan decree, paid these pensions, which they certainly would not have done if they had full knowledge of the matter. However, the Sacred Congregation, in Terracina, on June 2, 1838, §, states: "No custom can arise from error." Reiffenst. I. 1, decree, title 4, §. 5, no. 25; see Congregation, in Interamna, of Options, August 14, 1824. Therefore, no actual obligation seems to arise

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for the current pastor from the error of his predecessors. However, in this case, it seems that a just title is lacking to establish a prescription. Indeed, the payment of these pensions, by the two successors of Pastor Pini, cannot be considered to be based on a just title, because the decree of Archbishop Martin clearly excludes it, since the Archbishop personally imposed this burden on Pastor Pini. Moreover, the pastor continues, it does not help the opposing party that he, holding the church of Saint Mary, did not refuse the burden of the pension, for the pastor, before acquiring the benefice, could not object, but he did so as soon as he had the title.

[*Latin ed. p. 462*]

462 Florence. Since, from what has been discussed thus far, it cannot be doubted that the Archbishop Martini imposed said pensions without Apostolic approval; or, even if Apostolic approval was given, since it is evident from the facts that these pensions are not perpetual, the parish priest Materassi concluded that they are no longer to be paid. Having briefly explained these matters, the purpose was to resolve the following doubt: Whether the parish priest Materassi is obligated to pay the pensions decreed by the Archbishop's decree of the year 1782, imposed with the favor of eight parish priests in this case.

RESOLUTION. After deliberation, the Sacred Congregation decided on December 16, 1882, that the following should be answered: Affirmative, and furthermore.

FROM WHICH WE GATHER:

I. The Doctors unanimously teach that Ordinary pastors, without Apostolic approval, cannot impose pensions on parochial benefices.

II. That a hundred-year prescription, legally established, can hold weight regarding pensions, especially if a just title is present, in the place of Apostolic approval.

III. In this matter, it can easily be presumed that a just title and a certain obligation to provide the pensions were not lacking, even from the very fact that, for a hundred years, the parish priests of St. Mary's have paid these pensions without any difficulty.

IV. It cannot easily be argued that the true intention of Apostolic approval was truly lacking in this matter, because no mention of it was made when the pensions were imposed; indeed, perhaps the circumstances of that time led the Ordinary to believe it more expedient to remain silent about it, so that the civil government, a liberal institution, would not be offended, from which the Apostolic See was regarded as a hostile power.

[*Latin ed. p. 463*]

463. PAMPLONA. Regarding the prebend of Theology. December 16,

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1882. Through a summary of prayers. Eugenius Lara, Canon and theologian of the Cathedral Church of Pamplona, presented a petition to the Most Holy Prince, explaining that, although, according to the custom of that Church, he does not give public lectures on Holy Scripture, he nevertheless lectures in the diocesan seminary from the beginning of October until the end of May. However, since a doubt has arisen as to whether the lecturer can be excused from the choir, not only during the hours in which he teaches, but also for the entire day on which he gives lectures, so that he may consult his conscience, he earnestly requested a solution to the following questions:

1. Can a Canon and lecturer, or theologian of Pamplona, be excused from attending the choir for the entire day, on those days in which he lectures, from the beginning of October until the following May?

2. Can he also be excused from attending the choir for the Matins, which are always recited according to custom in this Cathedral Church?

3. Can he perform the daily distributions for the entire day on which he lectures, even if he does not attend the choir?

The Bishop, being asked, stated: that in Spain, in the year 1852, a royal diploma was issued, with the consent of the Apostolic Nuncio, by which Canons of office were commended, so that the burden of teaching or lecturing in seminaries might be imposed upon them. In my opinion, it is fitting that Bishops, in these difficult times, may make use of Canons of office for the purpose of lecturing in seminaries, if they judge it to be opportune.

SUMMARY OF THE MATTER.

[*Latin ed. p. 464*]

PAMPHILONEX. "Disputationes Syllogisticae." QUAE THEOLOGIS OBSTANT. Et primum, hoc perspicuum est: cum officium Theologi Canonici, per legem institutum, sit docere publice Clerum et populum in rebus divinis, videtur consequi quod hoc munus non possit perfici per lectiones quae privatim a Praeceptore dantur discipulis Seminarii. Immo, Concilium Tridentinum, Sessio V, Capitulum 1, de Reformatis, non solum instructionem populi consideravit, sed etiam locum designavit, scilicet Cathedralem vel Collegiatam, ad legem Scripturae, et hoc manifeste declaravit. S. Consilium, in Amerina, die 15 Martii 1710, in proposito tertio, in dubio: "An lectio Scripturae fiat publice in Ecclesia, an vero in Sacristia?", responsum datum est: affirmative pro prima parte, negative pro secunda. Et quamquam Card. Petra, in Commentariis ad Constitutionem Apostolicam, tomus 4, numerus 52, locum Cathedralis a Episcopo, ex maxima urgente causa, mutari posse affirmavit, tamen, animadvertens locum citatum Concilii Tridentini, conclusionem suam sic limitat: "dummodo huiusmodi lectio fiat omnino publice in loco publico: et

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non solum ecclesiastici, sed omnes de populo in lege divina instruantur." Cum igitur orator suo officium Canonici Theologi non perficiat, dum schola vacat, sequitur quod ipsum a residentia choralis numquam separari debeat. Hoc, et praesertim, in illis horis diei, in quibus non legit, retineri debet, praesertim quia huiusmodi exceptio debet tribui tanto Canonico poenitentiario, quam et canonicis magistrali et doctorali: quod in evidentem detrimentum servitii Chori verteret. Postquam ergo posito est quod orator a servitio choralis non separatur, videtur superfluum de distributionibus disputare, quae, ut tradit S. Rota, in decreto 789, recenti, Benedictus XIV, Institutio 107, numerus 58, Piton, Disputationes Ecclesiae 1, numerus 36, Canonicis debentur ratione servitii, non tituli, exceptis.

[*Latin ed. p. 465*]

CHAPTER 465: Those, according to chapter 1 concerning non-resident clergy, in the 6th canon, are excused by infirmity, or by a just and reasonable necessity of the body, or by evident utility to the Church. What, however, should be thought concerning the morning prayers, which are usually recited late the preceding evening, was declared by the Sacred Congregation of the Council, under the month of December 1587, in book 5, decrees, page 71: "A theologian, who is occupied with divine matters on the days in which he reads, is not to be considered present at the morning prayers, which are said late the preceding evening for the following day."

WHAT IS FAVORABLE TO THE THEOLOGIAN. Another point, and indeed a true one, can be observed, namely, that although it seems better to the mind of the Council of Trent, that the readings from Holy Scripture should be publicly held for the instruction of the clergy and the people in the cathedral or collegiate church; nevertheless, it cannot be doubted that the manner in this matter should be left to the prudent judgment of the Bishop. Indeed, the constant opinion of the Sacred Congregation was that the Bishop could, by his own judgment, compel a theologian to explain Holy Scripture, or to explain theology, whether dogmatic or moral, as was decided in Pacen on September 28, 1675, concerning the first question, and as Gallemart reports in Session 5 of the Council of Trent, chapter 1 concerning Reform, number 16, Fagnan in chapter "Quia nonnullis," concerning Masters, and Benedict XIV in the Synod of the Diocese, book 13, chapter 9. From this it followed that the judgment of the Bishop would be approved regarding the change of location; for theology is either explained in the seminary, as is usually the case, or in a separate place from the cathedral, but not publicly and from the pulpit. Nor are there lacking examples in which the transfer of the reading from the cathedral to the seminary has been expressly approved, as in Sarsinaten on September 9, 1843, Piscien on March 23, 1839, and in many others.

NOR IS IT DIFFERENT IN MODERN PRACTICE; for although the Sacred Congregation, in Dertbonen, SS. LL. July 1844, concerning the third

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question, absolutely mandated the observance of the Encyclical of the Most Holy Pope Gregory XVI, Inter praecipuas machinationes, denying the change of the reading of Holy Scripture in Kosso, and also declared this in Casalen on June 26, 1847, volume IV, page CLXXVII.

[*Latin ed. p. 466*]

4β6 PAMPLONA. Tamen, Episcopus moderavit, non quidem ad locum, sed ad materiam lectionis. In hoc casu, materia lectionum est conservata; solum locus est mutatus, et quidem per iusta causa, et per mandata regalia, approbata a Nuntio Hispaniarum, vel per statuta capitularia, quae ius particulare Ecclesiae Pampilonensis constituunt. Cum ergo non potest dubitari quod Canonicus, adimplens munus theologicum, plenamente satisfacit docendo, ex mandato Episcopi, et Scripturam in seminario, in opportuno loco, exponens, omnia privilegia fruatur quae Canonicis theologis conceduntur. Praeterea, est res extra controversiam quod Theologo dispensatum sit ab omni officio chori in die illa, in qua legit, et simul recipiat emolumenta, quasi praesens. Hoc patet ex innumeris resolutionibus Sacrorum Conciliorum, praesertim vero ex Oriolen, 5 Augusti 1816; Bisarchien, 26 Septembris 1857; Barchionen, 3 Iunii 1860; Arbor en, Theologalis, 7 Decembris 1861; Verulana, Emolumentorum, 15 Decembris 1877. Haec quidem distributio, theorema, apta videtur ad distributiones extraordinarias, sicut est resolutum in Amnionen, Octobris 1586, lib. 4 decret, pag. 189, ad dub. 17, et tradit Scarfantonius ad lucubr. Ceccoper., lib. 2 tit. 10 num. 1 seq., praesertim cum in Ecclesia Pampilonensi viget consuetudo, ex qua huiusmodi distributiones legitime absentibus conceduntur. Denique, posito quod orator privilegium habeat absentiandi a choro pro tota die, in qua Scripturae lectiones alumnis in seminario tradit, videtur quod ipse excusandus quoque sit a residentia chorali pro matutinis, etiamsi, juxta consuetudinem in Ecclesia cathedrali Pampilonensi vigentem, pridie semper recitari soleant. Rebus igitur ita se habentibus, missum est ad Patres ut decernerent quomodo postulatum orationis responderetur.

[*Latin ed. p. 467*]

PAMPLONEN. 467 RESOLUTION. After reviewing the matter on December 16, 1882, the Sacred Congregation responded: In the case under consideration, the Canon theologian may be absent from the choir and may receive stipends only for those hours of the day in which he lectures in the seminary, with a clear conscience. From which we gather the following: I. It is most fitting to adhere to the mind of the Council of Trent, which decreed that the reading of Holy Scripture should be held for the instruction of the clergy and the people in the Cathedral or Collegiate Church. II. Furthermore, the subject matter of these readings should be the explanation of the Holy Scriptures, as can be gathered from several resolutions of the Sacred Congregation, published especially after the Encyclical *In-

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ter praecipuas machinationes*, of Gregory XVI. III. This resolution does not contradict the aforementioned principle; for the subject matter of the readings remains the same, and only in the case under consideration is it permitted for the readings to be held in the seminary, perhaps due to the particular circumstances of the place (1). (1) It is the established practice of the Sacred Congregation to recall the Canon theologian to the explanation of the Holy Scriptures whenever the opportunity arises, as can be clearly seen by recalling the following passages: *Acta*, Vol. VIII, p. 336; Vol. IX, p. 505; and p. 510, Appendix I, concerning the origin and duties of the Canon theologian; Vol. X, p. 509; Vol. XIII, p. 87. Moreover, it should be noted that the theologian in the case under consideration was not granted permission to receive stipends for the entire day, but only for those hours of the day in which he lectures. For in that Cathedral, by custom, the morning prayers are recited before the morning Mass. But the Canon theologian is not considered present for the morning prayers recited after Vespers, as Fagnan teaches, *cap. licet de praeb*, n. 117; *S. C. O.*, *lib. 5*, *decret*, p. 7, *a terg*.

[*Latin ed. p. 468*]

TROPEA. OF CANONICAL RIGHTS. January 20, 1883. SUMMARY OF FACTS. Since the Auxiliary Bishop, for the greater glory of God and the honor of the cathedral of Tropea, had decided to establish two canonries, on May 23, 1881, he inquired about this matter with the Chapter; which readily gave its consent, with this express reservation, preserving all rights, emoluments, and "preeminences, and everything pertaining to the Chapter, according to canon law." Therefore, on the same day, the Bishop established both canonries, and decreed an annual revenue of 210 florins for each, of which one-third of the two hundred florins would be for daily expenses; and therefore, the Bishop said, the two canons would be subject to this very large portion, which would be ceded by the present administration. Although the right of patronage was conferred upon the Bishop for the time being, nevertheless, the founder, for the first time, offered these two benefices independently of any agreement. The new canons, having been received as brothers according to the customary form of possession, considered that they had absolutely the same rights as the older canons of the cathedral. Otherwise, they asserted, they would be denied the preeminence over those who were later admitted to the canonry, a voice in the chapter, in matters concerning the administration of the chapter's property, and participation in the common Mass. The newly admitted canons, bearing this exclusion with great displeasure, presented their complaints to the Sacred Congregation of the Council. SYNOPTIC DISCUSSION. The Chapter maintains that the Bishop did not substitute a benefice for the two existing canonries, which would be an unjust reprimand from the FISCAL

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CHAPTER.

[*Latin ed. p. 469*]

TROPIEN. They had suffered the loss of their endowments, but two entirely distinct canonries were founded and established above the twenty-four older ones. This, indeed, appears evident from the entire context of the foundation, and especially from their own distinct titles and duties, from the patronage to which they are especially subject, and finally, from the specific tasks to be carried out concerning certain disciplines for their benefit. Furthermore, these canonries, being endowed with their own laws and revenues, do not seem to have anything in common with the canonries of the mass, nor, therefore, can they prejudice the rights of the older ones. And this is especially true, considering the limitation of consent that was added, which clearly intended to preserve all rights, emoluments, and privileges of the older ones.

THOSE WHO WERE RECENTLY APPOINTED AS CANONS. Those recently appointed as canons observe that they cannot be denied their canonical rights, and especially the choral distributions and the common mass. For, according to civil law, the chapter of Tropien, like all cathedral chapters, retains the choral mass for the benefit of all present, in order to serve the choir. But this chapter consists of twenty-four canons before the Church. Therefore, all those who are interested in the choir must yield the daily choral distributions, according to the decrees of the Council of Trent; which decreed that those appointed to the choir should be exempt, not only from feelings of piety, but also from some monetary gain, so that the divine services might be celebrated with greater decorum. From this, it is clear that the choral distributions do not constitute an integral part of the individual benefices, but are entirely distinct from them; thus, the benefices consist of two parts. The law of suppression of twelve benefices removed the stipends, but left the entire daily reward for attendance and participation in the choir. Therefore, if the Bishop, through his generosity, restored two canonries, it cannot be understood how the chapter can prevent new appointees from participating in the choral mass. If, however, the canonries established by the Bishop are considered as new benefices, then all difficulty is removed by the words of the Code of Canon Law to which we refer.

[*Latin ed. p. 470*]

470. TROPIE. It is possible for a Bishop to erect a canonry, and therefore, those instituted as canons by him have a stall in the choir and a voice in the chapter, and, after their institution, they precede other canons, and ought to enjoy the honors and privileges which the older canons possess; as is the case in Senogallien, on February 25, 1627, as testified by Barbosa, in the bull, at folio 95, verso 1. Furthermore, it is evident from the practice of this Church that this has been the case, as can be seen from the erections

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of prebends which have been made at various times by the Bishops; whose canons have received distributions from the choir. Therefore, it is not understood why, in recent times, such distributions have been denied. Perhaps due to a reservation by the chapter? But the chapter could not reserve to itself what was not its own. Therefore, it is clear that those canons of a new erection ought to be equal to the other canons, both in terms of honors and in terms of emoluments. By what right did twelve canons add to themselves a portion of the choir mass, which also belongs to others?

OBSERVATIONS FOR BOTH SIDES. It is undoubtedly the case in law that a Bishop can erect new canonries, whether in cathedrals or in collegiate churches, but with the consent of the chapter. Ceccoperi, *Lucubrationes Canonicae*, book 1, title 14, number 35; Sacred Congregation of Aquila, February 20, 1677; Sabina, April 14, 1696. Such an erection can be made either purely and simply, or with certain conditions and reservations, either by the founder or by the chapter. If the former is the case, some doctors nevertheless maintain that new canons are not in all respects equal to the older ones, due to the legal presumption that the admission is considered to be made without any diminution or loss of their own rights; Scarfanton, *ad Ceccoperi*, book 1, title 14, number 59 and following; Tondut, *Quaestiones de Beneficiis*, chapter 68, number 15. Others, however, hold that by a pure and simple admission, the new canons are fully incorporated into the body of the chapter, so that the newly admitted canons must enjoy the same honors, rights, and emoluments as the older brethren: Cardinal De Luca, *De Canon.*

[*Latin ed. p. 471*]

TROPUS 471, disputatio 37, numerus 2; Panimoll, decreto 98, anno 1, numerus 6; Pigliateli, consultatio, canon 48, tomus 6, in totum. Tamen, cum his diversis sententiis, quae traduntur ab eodem Cardinale De Luca, eodem titulo, disputatio 6, numerus 3, et a Piton, de Controversiis Patrum, allegatio 64, numerus 5, res facile componi videtur, siquidem distinguatur, utrum novi canonici pure et simpliciter admittantur cum separata praebenda, distinctisque fructibus et emolumentis, vel eorumdem substantia immittatur in communem capituli massam. Ex facto enim haud immerito arguendum foret, Capitulum in primo casu omnia iura sua atque emolumenta distincta atque intacta praeservare voluisse, in altero vero una cum reditibus et emolumentis omnia iura et onera ex aequo novis confratribus communicare. Ubi vero fiat novae erectioni locus sub certis conditionibus et reservationibus, communis est sententia, cui constanter adhaesit Sacra Congregatio, novos canonicos easdem servare debere, utpote adiectas in limine fundationis, nec proinde ulterius praetendere posse; Panimoll, loco citato, numerus 1 et sequentes; Cardinale De Luca, loco citato, disputatio 6, numerus 3; Ceccoperi, Lucubrationes, canon, liber 1, titulus 14, numerus 35; Sacra Congregatio, in Erectione Canonicatuum in Aretina, 5 Maii 1703; in Alatrina,

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8 Februarii 1727; in Archipresbyteratus Toletanae, 1 Februarii 1767. Cum autem stallum in choro et vox in capitulo sint de substantia canoniae, Barbos, de Canonibus et Dignitatibus, capitel 12, numerus 1; Reiffenstiel, Ius Canonicum, tomus 3, de canon, numerus 57, probe intelligitur praedictas conditiones et reservationes, quoties agatur de veris proprieque dictis canonicatibus erigendis, non circa substantiam, sed circa modum tantummodo exercendi praedicta iura ac praerogativas, incidere posse: secus namque si per fundationem vel capituli consensum detraheretur iisdem substantiaalibus iuribus, eo ipso novi canonici inter meros honorarios recensendi forent, prout late docuit Rota in Novarien, Praecedentiae 3 Iulii 1713, coram Lancetta, et in confirmatoria 11 Decembris 1713, coram Barbadico, ac tenuit Sacra Congregatio, in Vinfimilien, de Vocis in Capitulo, 17 Decembris 1836.

[*Latin ed. p. 472*]

472. TROPIEN. However, the aforementioned conditions and reservations may, in the first place, limit the right to participate in distributions and other benefits of the Chapter. Although newly established canons can participate in the distributions and benefits of others, insofar as they themselves contribute their proper share, as Barbos, *De Canon.*, chapter 21, number 25, states; and as Pignatelli, *Consilia Canonica*, 134, volume 9, number 35, and Gallemart, *ad Conc. Trid.*, session 21, chapter 3, number 8, explain, using the term "proportionally"; nevertheless, if, by the law of the foundation or by the consent of the Chapter, older canons are excluded from participating in the benefits already acquired, the Holy Congregation has approved such exclusion. Indeed, in *Nullius seu Terrae Pontiant Praecedentiae et distributionum*, March 26, 1735, in response to the second question, "To whom are the distributions and benefits mentioned to be given?", the answer was: "The distributions and benefits arising from the exercise of the care of souls, and from legacies left before the erection of new canons, are to be given to the older canons." Similarly, in *Fabrianen. Iurium et Emolumentorum*, August 8, 1820, in response to the question: "Do canons of a second erection have the right to receive the daily distributions and other benefits enjoyed by canons of the first erection in this case?", the answer was: "No." After omitting several other points, in *Veliterna Participationis*, December 20, 1851, in response to the questions: "I. Are canons of a second and third erection to be admitted to participate in all the benefits accruing to the Chapter, both for Masses and other occasional functions, and from contributions from the community or the piety of the faithful, as well as from funerals in this case? II. Are the aforementioned canons to participate in pious legacies and anniversaries left to the Chapter in this case?" the response was: "Regarding I and II, negatively, with regard to benefits arising from dispositions left to the Chapter before the erection of the canons and from the exercise of the care of souls. In the remain-

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ing cases, affirmatively." As for benefits of uncertain origin, see Gard, *De Luca*, section 6.

[*Latin ed. p. 473*]

Trope 473, number 14, carefully distinguishes whether the benefit consists in a certain and determined portion to be distributed to each canon, or in a certain sum to be divided among the canons according to their greater or lesser number; and it seems that the benefits of the first class are also due to canons of a newly established church.

This distinction appears to have been held by the Holy Office in Faventina on December 12, 1564, in response to a question: "Whether the same archpriest, having been excluded from participating in the distributions and benefits, can participate in the alms given to the Chapter for funerals and anniversaries, on the occasion of a funeral, which are distributed among the present members?" The response was: "The archpriest should not participate in those things which come into the hands of the treasurer, from which a portion is deducted for the other canons." Similarly, conditions and reservations added by the founder or by the Chapter can affect the precedence. This was noted in the published document concerning the case of Romana, regarding the precedence of canonical rights and benefits, on February 18, 1865, §. Regarding the first point: "It is not legally reprehensible for the will of the founders to stipulate that 'canons of a new' establishment occupy the last seats in the choir, and that they lack the right of precedence with the older canons, according to the decree of the Holy Congregation in Pisana, concerning the erection of canons, on December 5, 1846, §. If it pleases [the Holy See], and therefore, it is sometimes said that the Holy See has confirmed a condition attached to the reception of new canons, by which precedence with respect to the older canons is denied to the new ones, as can be seen in Nepeta on December 1, 1704, as reported in Arianen, concerning Canons, on February 1, 1733. And indeed, in Civitatis Castellanae, concerning Canonical Rights, on July 16, 1836, the Chapter gave its consent for the new erection of two canons, under the condition: that the two new canons should not enjoy the privileges of seats; so that they must always hold the last two seats, and should not advance to higher seats in the event of a vacancy. The question raised was: "Whether this condition should be confirmed or rejected."

[*Latin ed. p. 474*]

Regarding the question posed to the Chapter concerning the matter – a response has been issued – affirming the first part, but denying the second. These points, noted thus far, concerning benefits and precedence, seem to lay out a path for the question regarding the voice in the Chapter. For these benefits, although pertaining to all canons in general, in particular apply only to the extent that each individual has an interest in the respective

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matters. Therefore, if older canons can preserve their acquired rights and benefits, it necessarily follows that new canons cannot have a voice concerning matters reserved to the older canons. Hence, the Sacred Congregation, in Eugubina, concerning the erection of a canonical foundation, on March 26, 1703, when asked: "Whether and in which matters the aforementioned canons have the right to participate in Chapter sessions," responded: "Affirmatively, in all matters, except those pertaining to the interests and rights of the older canons." And in s. Miniati, on November 24, 1827, regarding the doubt: "Whether and in which matters a theological canon enjoys an active and passive voice in the case," the response was: "Affirmatively, in all matters, except those pertaining to the common fund and goods, and to matters concerning the Chapter, prior to the theological canon's assignment." With these premises established, it was left to the Most Reverend Fathers to judge whether the reservation attached to the Chapter should be extended, with the consent of the Chapter, and to resolve the following doubts: I. Whether the canons of the second foundation enjoy all the rights and benefits of the other canons in the case. II. Whether these canons should enjoy the same precedence regarding the stall, as the other canons in the case. III. Whether and in which matters these canons have the right to participate in Chapter sessions in the case.

[*Latin ed. p. 475*]

TROPE. 475. RESOLUTION. The Sacred Order of the Congregation, after due deliberation on the 20th of January, decided that the following should be answered:

To I. Regarding daily distributions, affirmatively, insofar as and to the extent that they are included in the common mass distribution. Regarding emoluments derived from dispositions left to the Chapter before the erection of new Canonries, negatively. Concerning the rights, provision will be made in what follows.

To II. Negatively.

To III. Affirmatively in all respects, except those concerning the interests and particular rights of the older canons.

FROM WHICH ARE GATHERED:

I. That Bishops can, with the consent of the Chapter, erect new canonical benefices; to which the founder or the Chapter can add certain conditions and reservations, both regarding distributions and regarding rights and precedence in the choir.

II. That the common opinion and the practice of the Holy Congregation of the Council should be that canons of a new erection must observe the conditions and reservations that were added at the time of the foundation.

III. That the Holy Congregation ratified and approved the reservations,

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insofar as they also concerned the right of participating in distributions and other emoluments of the Chapter, already acquired by the older canons, and approved the exclusion of the new canons, or those of a new erection.

IV. That the Holy Congregation also ratified the conditions added regarding precedence: for it is not disapproved in law that canons of a new erection occupy the last seats in the choir, and that they lack the right of precedence with the older canons.

[*Latin ed. p. 476*]

476. TROPE. V. Therefore, canons of a newly established church, by virtue of a reservation made by the chapter, cannot receive benefits accruing to the chapter from its endowments, prior to the new establishment; they can receive daily distributions insofar as they contribute to the common fund; they cannot enjoy precedence regarding a stall in the choir; nor can they attend chapter sessions in which the rights of the older canons are discussed.

ASSEMBLY. On January 20, 1883, in the year 1881, the Church of St. Cassiam in the Diocese of B. remained without its pastor. In order to provide for the governance of souls, the Bishop, concerned about this situation, decided to appoint a new pastor to the same church as soon as possible through an assembly. The names of those who presented themselves for the assembly were: Marcus Bolognesi, Hormisdas Giunchi, Vincentius Lelli, Aloysius Bandi, and Zephyrinus Zazzeri; furthermore, according to the records, Anthony Morellini also took part. The candidates were therefore praised, and on January 19, 1882, they appeared before the Bishop and three examiners to undergo examination. Subsequently, on the 21st of the same month, the candidates were called back, their answers were considered, and their testimonies and moral probity were examined; only those who were deemed suitable in terms of doctrinal merit, as appears from the records, were approved, while the three last were rejected. After this, the Bishop chose Marcus Bolognesi, who had received the greater number of votes, and decreed that he should be assigned to the vacant church. Aloysius Bandi was greatly displeased by this, and therefore, within the legally prescribed time, he filed an appeal, presenting his grievances against the judgment of the examiners to the Sacred Congregation.

SUMMARY OF THE FACTS.

[*Latin ed. p. 477*]

CONCURSUS 477: Grave complaints concerning morals, and a desire for sound doctrine from the Bolognese priest, were brought to the attention of the authorities, and they earnestly requested that the proceedings of the competition be subjected to a new examination. The Bishop, having been

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consulted on the matter, endeavored to demonstrate that the judgment of the examiners had been just; and concerning the election to the parish, he stated: if certain things had been circulated against the morals of the aforementioned priest eighteen years ago, they would have been entirely forgotten by now, had they not been revived in memory. But even if those voices were grounded in truth, which is not certain, they seem unable to present an obstacle to his promotion, after the aforementioned priest has commendably cared for souls for fifteen years and more in the rugged mountains of this Diocese.

DISCUSSION: SYNOPTIC OPINION OF THE CONSULTOR. He considered the appeal made to the Sacred Congregation by the priest Bandi to have been reasonable and just, and therefore he declared that the judgment of the examiners should be reformed: 1° because all and each of the candidates were weak, and there is no such difference between them that three should be approved and three rejected; 2° moreover, when compared with each other, all seem to be worthy of approval, more or less; 3° because the scrutiny was conducted exclusively on the basis of knowledge, without any consideration of the merits of each individual; from which it follows: 4° that a comparative judgment cannot be just; 5° because, when the writings of the Bolognese priest and the priest Bandi are compared with each other, the latter seems to surpass the former to some extent. Therefore, he concluded that either a new competition should be held, or one of the candidates should be chosen, who, after considering his merits, seems to be preferable to the others; in which case, since the priest Bandi surpasses all the others, the parish should be assigned to him.

In the meantime, the Bolognese priest canonically took possession of the parish on August 19th; and he admits the reason for this action was due to ignorance of the prohibition of the Sacred Congregation, as he stated in a letter that he sent to the same Congregation on October 21st.

[*Latin ed. p. 478*]

478 It is noteworthy that the Council of Trent, in Session 24, chapter 18, concerning reforms, established that in the collation of a parochial benefice, a cumulative judgment of knowledge and qualifications must be rendered by the synodal examiners. Thus, the mandate of the Fathers of Trent states: "After the examination has been completed, they shall report how many of those examined have been judged suitable by age, morals, doctrine, prudence, and other qualities suitable for governing the vacant church." This doctrine concerning the cumulative and conjoint judgment regarding knowledge and qualifications of candidates is more clearly explained and confirmed by Benedict XIV in *De Synodo Dioec.*, book 4, chapter 8, number 3: "The examiners must not only test their knowledge, but also give due consideration to probity, morals, prudence, age, and other qualities that are necessary for one to whom the care

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of souls is entrusted." The same Pontiff's Constitution, beginning with "Cum Illud," also states, in § 16: "Let the examiners apply no less, and perhaps even greater, diligence in examining other qualities conducive to the care of souls: let them inquire into the purity of morals, gravity, prudence, past service to the Church, acquired merit in other duties, and other commendable virtues, all of which must be associated with doctrine: and having considered all these things together, they shall reject the unqualified by their suffrage, and shall report the qualified to the Bishop." Indeed, if the Council of Trent and the Supreme Pontiff Benedict XIV have established a cumulative and conjoint judgment of knowledge and qualifications, then, if this form is disregarded, the very process of selection must necessarily be corrupted. Let Reclusius be heard on the subject of elections, page 1, title 5, number 16, and following: "It will also be a bad report from the examiners whenever they have confined themselves to the limits of doctrine, but have investigated very little the morals and other qualities suitable for the care of souls..." Thus, such a flawed examination...

ANALYTICAL OBSERVATIONS FROM OFFICE III.

[*Latin ed. p. 479*]

CONCURSUS 47fr » the report states that the prescribed and established » form was not observed, resulting in the nullity of the competition, etc. ». To this doctrine, the Sacred Congregation consistently adheres, as it stated in the case of Monreale on August 2, 1607, in the report by Fagnano in chapter E, regarding age and qualifications, number 15: « If the examiners do not present suitable candidates in all respects, as the Council requires, then the competition is considered null and void ». Resolutions that emerged in the competition in Beneventana on January 26, 1878, and in Viterbo on May 4 of the same year (1) appear to be consistent with this. However, in the competition under discussion, the examiners considered the merits of Zazzeri, Morellini, and the candidate Bandi; and, as the Consultor noted, this method of judging resulted in Aloysius Bandi being rejected, although he obtained 15 and a half votes regarding his knowledge; while, for his merits, zero was recorded in the presented schema, which was also done for the other two rejected candidates; thus, according to their opinion, approval or rejection should be based solely on knowledge. If the 15 and a half points awarded to Mr. Bandi regarding his knowledge had been increased by 12, or at least 10 points regarding his merits, not only would he have surpassed the median number of votes, but he might even have obtained the first place in the approval. For if 10 points were given to the Bolognese priest for his merits, then, a fortiori, at least 10 points should have been awarded to Bandi, who has properly exercised parochial duties for many years, and who, as stated in the testimonial letters from his bishop, is en-

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dowed with good and honest morals. From all of the above, as appears from the records, the nullity of the competition seems manifest, and therefore a new competition should be announced. Furthermore, it was also noted that if, even disregarding the established form, the Fathers were to deem the competition valid, then Bolognesi would certainly be rejected by the Church. For he, contrary to the mandate of the Sacred Congregation, has a canonical impediment.

(1) You have the first in Volume 125, on page 117; the second is in Volume XI, 117.

[*Latin ed. p. 480*]

480 The competition for the benefice was declared valid. Consequently, it appears that, through this manner of acting, one has merited incurring the penalties prescribed by the decrees of the Council of Trent, Session 22, Chapter 11, concerning reforms, against those who usurp the jurisdiction and goods of the Church. Among these most serious penalties, the deprivation of any ecclesiastical benefice is also mentioned. Therefore, having admitted the validity of the competition, the election of the Bolognese priest does not seem to be approvable. With these considerations, two points must be clarified:

I. Does it appear from the reports that the examiners acted improperly, so that a new examination should be held in this case? And to this, the answer is negative.

II. Should the parish of St. Cassiam be assisted in this case?

RESOLUTION. After careful consideration, the Sacred Congregation decided on January 20, 1883, to respond: That it does appear from the reports that the examiners acted improperly, and that there is cause for a new competition; and further, (1).

(1) Let us abstain from deductions and applications, so that our benevolent readers may remember what has been said and observed by us concerning the matters of the competition, and, with these deductions and observations in mind, they may find confirmation from the resolution given in the present matter, in Volume X, page 117, and 125; in Volume XIII, pages 113, by the Sacred Congregation, and 119. It is only necessary here to note the deprivation of the parish, January 20, 1883.

SUMMARY OF THE FACTS. The Bishop, in order to remedy the spiritual detriment being inflicted upon the people by the actions of the parish priest, appointed an assistant to the aforementioned parish priest; who had already completed 73 years, and was suffering from poor health. And simultaneously, he announced...

[*Latin ed. p. 481*]

4. If the parish priest did not provide a suitable pension for the honest sustenance of the coadjutor, this did not escape the attention of the parish

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priest. He, being reluctant to pay the pension, had recourse to the secular government, against the manner of acting of the Bishop. News of this immediately reached the Bishop, and he forthwith imposed the penalty of provisional suspension upon him; then, through a formal process before the episcopal court, after three fruitless warnings, on February 4, 1882, not only was the provisional decree of suspension confirmed, but the parish priest himself, persisting in his defiance, was deprived of the benefits of the parish and all its revenues and emoluments. The parish priest persistently refused to provide the coadjutor with a suitable pension, and he appealed to the Holy See. The defense of the parish priest. The parish priest divided his argument into three main points: 1° he demonstrated that no crime could be inferred from the sentence of the Bishop; 2° he refuted the crimes, whether those brought forth by the Curia, or those presented by the fiscal promoter, or those which had been confirmed by the sentence; 3° he endeavored to demonstrate, from the sentence, from the words of the Bishop, and from other documents, not only that the parish priest was not guilty of the crimes of which he was accused, but that he was innocent. Turning to the first point of his argument, he noted that the judge who must pronounce sentences, especially if he condemns crimes, must be persuaded of their truth, and must present the reasoning that leads to that conviction, a reasoning that necessarily follows from the facts clearly presented. This persuasion is not found in the Bishop's sentence. For he asserts crimes, and then presents evidence, which itself requires evidence. Then he calls the parish priest a schismatic, because he received the priestly ordination from a schismatic Bishop in Corfu, and because he sent his nephew Spiridion to be ordained into the priesthood by the same schismatic Bishop.

[*Latin ed. p. 482*]

482 The parish was deprived of its pastor. However, it is not proven whether the priest actually received his priestly ordination from a schismatic bishop, or whether, subsequently, he was ordained or blessed again by a Catholic bishop, and whether Nepos Spiridion obtained his position through the order of someone. Furthermore, the pastor is called not only a schismatic, but also a heretic, by the bishop, because he did not administer the sacrament of extreme unction, as can be gathered from a document presented by the procurator of the cathedral church. Moreover, the pastor is called a heretic in the judgment of the court, because he administered the sacrament of penance to children gathered in groups; because he married those who were prohibited by consanguinity or affinity; but the bishop does not indicate the names of all of these individuals. From the very invalidity of the pastor's appointment, the patron argues that there is no crime, and he adds these reasons. The proof must be precise, with the day and the designated consul, Maschard de Probation, conclusion 1107. And just as the appearance of a doubtful matter must be legitimately pre-

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sented, as in Chapter 3 of Probation, it must be clear, evident, and certain, as in Chapter 8, etc., concluding regularly and fully, Matthew 18, law 9, Code of Judicature. In criminal cases, a clearer light is required, as the law states at the end of the Code of Judicature. After these remarks, proceeding to the second part of his argument, he attempts to refute all the crimes imputed to the pastor. And first of all, he states that there is a threefold progression, namely, imputation, accusation, and finally, judgment, and that exceptions are excluded from the judgment, which are drawn from the imputation and accusation: although the testimony of witnesses is the same for all. He states that the accusation and the judgment are in open contradiction, because while the accusation asserts that the pastor never explained the Gospel, it adds that he improperly performed his duties; while the judgment asserts that all possible means were used, which could have been objections, warnings, even the deprivation of the parish, it is in open contradiction when it affirms that the pastor neglected his duties. Then, the patron proceeds to his argument.

[*Latin ed. p. 483*]

The parish of PRIVATIONIS 483 suffered because the parish priest had not properly fulfilled his duties. The parish priest ought, on all festive days, to explain the Gospel, impart Christian doctrine, and instruct the parishioners on matters necessary for the salvation of souls; but if, through some impediment, he was unable to fulfill these duties, the Bishop ought to have warned him. However, even if negligence were proven in these matters, the fault would primarily be that of the Bishop, then of the parish priest, and of other priests, according to the Constitution of Benedict XIV, *Etsi Minime*, § 2. Indeed, it says that the Bishop's fault is greater, because reason demands that a legitimate teacher explain and impart doctrine everywhere. If, however, the Bishop only now, after seventeen years, became aware of this, he too would have to be considered negligent. He could be excused if he had been absent everywhere, and in that parish, as if burdened by the duties of the apostles, but he cannot be excused if he neglected to inquire about everything through visitors, as prescribed by § 16 of the same constitution. However, accusations that the parish priest administered no sacraments at all, or that, if he sometimes did, he mocked their sanctity, are refuted by other accusations: for example, that he baptized children using lamp oil, that he rarely heard confessions, that he did not assist the sick with necessary spiritual consolation unless repeatedly urged, that he gave general absolution to large groups of children, that he heard confessions of women outside the confessional, and that he joined couples in marriage without dispensations, even when they were related by a degree prohibited by law. Therefore, he is accused of administering no sacraments at all, and of administering them all improperly. But it is established by documents that the parish priest always imparted Christian

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doctrine, always explained the mysteries of the faith, and always taught the parishioners the rudiments of religion. With regard to this, it is said that the calumny is refuted by sworn testimony of witnesses and by the testimonies of other parish priests. He argued that the parish priest could not be called a schismatic, because he was ejected from the priesthood by a schismatic bishop in Corcyra, and because his nephew Spiridion requested it.

[*Latin ed. p. 484*]

48fe. In the parish, a man was promoted to the priesthood by the schismatic Bishop. Indeed, the parish priest received Holy Orders from the schismatic Bishop; moreover, he was free from errors, but he later renounced his errors. It cannot be said that he is a schismatic, since almost everyone considers him to be a true priest; and various neighboring pastors do not hesitate to declare themselves to be his friends, and they always testify that they have found him to be a priest of sound doctrine. The testimony of sworn witnesses proves that the parish priest administered the Extreme Unction with oil that he himself had blessed; for Greek priests use oil that they themselves have blessed, as Mantena demonstrates in volume 1, page 248; Nathanael in his Epistles, addressed to the Bishop of Anagnin; Arcudius in book 8, chapter 2, note; they have the power to consecrate it; Goarius in the Euchologion, which has been recommended several times by Benedict XIV. Furthermore, he cannot be considered a heretic because he absolved a group of children gathered together with a single blessing, without violating the form of the sacramental rite. In addition, the accuser adds that the parish priest did nothing against the sacrament, as is proven by the aforementioned Goarius in the Office of Holy Oil. Nor can he be proven to be a heretic because he joined in marriage parents who were forbidden to marry by law. However, this is not proven, but merely asserted; even if it were proven, the crime would be lacking, because it would have to be proven that he knowingly performed the marriage. The parish priest used the diligence that is prescribed by the Council of Trent. Finally, the accuser states that, according to the judgment, and from documents from the Bishop and other documents, it is clear that the parish priest is not only not guilty, but is innocent. Then he adds that the testimony of witnesses against the parish priest deserves no credence. For either the witnesses were heard as a result of an investigation, and then they could not be heard under oath unless a summons was issued, as stated in Chapter 2 of the De Testibus, by Pyrhing in book 2, decretum, title 6, number 16, 3; or they were not heard as a result of an investigation, and the witnesses could not be heard because, as laypersons, they are excluded from judgments against clerics, as stated in Chapter 14 of the De Testibus, 8. But the Bishop could not establish anything against the witnesses that he himself had established

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each year for so many years during the canonical visitations.

[*Latin ed. p. 485*]

DEFENSE OF THE BISHOP REGARDING THE DEPRIVATION OF A PARISH. The defender argues that everything should be maintained in full force against the opinion of the curial bishop. Since the Council of Trident, in chapter 6 of Session 21 concerning Reform, commands bishops to "coerce and punish" pastors "who" live in a scandalous and disgraceful manner, after they have been warned, and if they still persist in their wickedness, they have the power, according to the constitutions of the sacred canons, to deprive them of the parish, with exemption and any other appropriate measure. Therefore, in order that a safe path to the deprivation of a parable may be reached for a pastor living scandalously, it seems that nothing else is required than conclusive proof of the crime. Canon... We, in question 2, canon 1, and in the decree, question 2, and the preceding canonical form, according to what is prescribed in Chapter 2, and Chapter 6, Concerning the Cohabitation of Clerics and Women. However, the Holy Congregation, in the document *Parochialis* of Krakow, dated February 10, 1760, and in the document *Ackeruntina Privationis Paroeciae* of March 31, 1855, states that this form consists of three warnings, as Fargna explains in *De Jure Patron*, part 2, canon 21, sections 9, number 6. - there - "Because the penalty of deprivation is the greatest, and is considered equal to civil death, it cannot be imposed unless it is established that the pastor, having been warned, has refused to turn away from the path of perdition." Can it be objected that it is permissible to observe a graduated penalty before the sentence of deprivation is pronounced? Since a distinction must be made between beneficed clergy and pastors. Regarding the former, the Council of Trent, desiring to see if they might repent before resorting to extreme remedies, in Session 25, chapter 14 concerning Reform, ordered that a graduated penalty be observed, so that if they did not obey the first warning, they should be deprived of one-third of their revenues; if they did not obey the second, they should be deprived of all their revenues; and if they still persisted in their wickedness, they should be deprived of their offices and revenues, and rendered incapable of holding any benefice, and should be subject to the penalty of excommunication. However, regarding pastors, it wished to proceed differently, so that if, after being warned and coerced, they continued to be stubborn in their bad habits, they should be deprived of the parish.

[*Latin ed. p. 486*]

486. The parish may be deprived of its pastor, as taught by Giraldi in *Expositio Iuris Pontificii*, part I, book 3, Decretal, title 2, section 332, page 228; furthermore, the Holy Congregation affirmed this in Burgos, concerning the parish church of Saint Domnin, on March 6, 1737. Now, in this matter,

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those things which are explicitly required by law are rigorously verified: therefore, it is clear that the judgment of the Court conforms to the common laws, both in external matters and in internal matters. Indeed, from an external examination of the facts, it appears that the pastor was not a pastor after a solemn process was instituted by the Episcopal Court. Since the procedural documents were completed, public documents were presented, and witnesses were duly heard and sworn, and the pastor was warned three times to present his defense, but he refused to go to trial, a suitable defender was appointed by the Court. Therefore, after all these things were completed, a judgment of deprivation of the parish and a provisional suspension from divine duties was imposed upon him by the Episcopal Court, against his persistent defiance. Having briefly considered these matters, everyone can easily perceive that, considering only the external facts, there is no reason to doubt the justice and validity of the judgment. However, the justice and validity of the judgment will become even more evident if we consider the internal aspects, or if we turn our attention to the nature and character of the crimes committed by the aforementioned pastor. There is certainly no doubt about the conclusive proof of the crimes; for the rule of law teaches us that, in every case, two witnesses of proven life are sufficient to provide complete and reliable evidence, with no exceptions, unless the law expressly requires more in any particular case: *Leg. Ubi numerus de test, et attestât. Can. Si teste §. Ubi numerus quaest. 3, Cap. Licet universis 13 de test, et attest; Reiftenstuel, lib. 2, tit. 20, eod. tit., part. 8, n. 331*. In this case, not only were two witnesses present, but several witnesses, all of mature age and without exception, testified with one voice regarding the bad conduct of the pastor, so that he did not properly fulfill his pastoral duties.

[*Latin ed. p. 487*]

The fact that the parish is in a state of deprivation is demonstrated by an irrefutable argument. It is clear that the parish priest did not teach the faithful the precepts of religion concerning the necessity of the sacraments, nor did he administer the sacraments, or administered them only in such a way that it seemed to mock them. It is also clear, from several arguments, that the parish priest was not in communion with the Greek Church, but was a schismatic; and that he was regarded as such by his flock and by the neighboring people who knew him. Furthermore, it can be deduced that heresy is to be suspected in him from the fact that he never administered the sacrament of extreme unction; because he administered the sacrament of penance to children without observing the proper form, but by receiving their confessions in groups; because he joined in marriage those who are related by blood and affinity without an apostolic dispensation, and other similar things. After these most evident testimonies of the Curia, the exception made for the parish priest must disappear, which suggested

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that the witnesses, whether led by hatred or enmity, had given such false testimony against him, if indeed it is consonant with the testimony of the Bishop. "Furthermore," it cannot be believed that the bishops, neither of their own diocese nor of another, are so forgetful of the salvation of their flocks, that they would not be deterred by the divine threat of judgment, but would be moved by hatred or favor, and would commit a singular injustice against the sacred canons, saying that evil is good, and good is evil, placing darkness for light, and light for darkness. Benedict XIV, in the Constitution *Cum Illud*. Therefore, since the crimes for which the parish priest is accused and for which he is proven guilty are so great and so abnormal, nothing prevented the Bishop from being compelled to proceed according to the legal procedures against such a parish priest, namely, with warnings that were ignored, to suspension, and finally to deprivation of the benefice with all its emoluments. With these things stated on both sides, the following question was to be elucidated: Whether the judgment of the Episcopal Curia of Bishop P. should be confirmed or overturned in this case.

[*Latin ed. p. 488*]

488. RESOLUTION REGARDING THE DEPRIVATION OF A PARISH. The Sacred Congregation of the Council, having knowledge of the matter, on January 20, 1883, decided to respond: The judgment is to be confirmed. However, the Bishop must ensure that a benefice is assigned to the parish to provide a pension for the support of the priest (Parish Priest); and furthermore. From WHICH ARE GATHERED: I. That Bishops, from the 21st Session of the Council of Trent, chapter 6 concerning Reforms, can deprive Parish Priests who live shamefully and scandalously; insofar as they persevere in their wickedness, after having been warned, coerced, and punished. II. However, since the penalty of deprivation is the most severe and is equivalent to civil death, it cannot be imposed unless the canonical form has been followed beforehand, from which a conclusive proof of the crime arises, and it is established that the Parish Priest has refused to turn away from the path of perdition. III. It appears to have been conclusively proven in the matter that the Parish Priest was leading such a scandalous life that he was considered a schismatic by all and suspected of heresy; and that, after being warned by the Bishop, he remained incorrigible, denying his own crimes. (1) (1) Compare Volume XIV, 372 and Volume XII, 243. REGARDING MARRIAGES. On January 20, 1883, Theresia Musani, desiring to unite her daughter, Christina, with James Bianchi in marriage, requested that Andrew Scagnetti assist her in this matter; since he was very familiar with James and taught him the art of music. Andrew, having undertaken the matter, in May 1879, went to the house.

COMPENDIUM OF THE FACTS.

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[*Latin ed. p. 489*]

WEDDINGS 489. Theresia arrived, asserting that James had given her his word, even confirmed by an oath, to take Christina as his wife, and that he had received from him a small gift, that is, a bridal wreath, to give to the same girl, but under the condition that the matter should never be revealed to anyone. Theresia firmly believed these words, and convinced herself that her daughter was betrothed to James, and she remained in this belief for about a year and a half, although James never entered the betrothed woman's house, nor had he addressed her in letters or in person. However, when she learned that James, unfaithful, had already contracted a betrothal with the daughter of a certain Francis of Summa, she was deeply distressed and urgently appealed to the Archdiocesan Curia, requesting that he be compelled to fulfill his promise to her daughter. Immediately, upon receiving this information, the Auxiliary Bishop instructed Francis of Summa, through Theresia Musani, not to allow her daughter to be betrothed to James, pending further investigation; but in vain, for it is established that the betrothal had already been initiated two days after the warning was received. Certainly, a formal process was completed, and after hearing the testimony of the defender of the marriage and, in particular, the sworn testimony of Andrea Scagnetti, although James refused to appear in court, and declared in a letter that Scagnetti was a completely false witness, a judgment was nevertheless rendered in favor of the existence of the betrothal between James and Christina, and the man was forbidden to enter into any other betrothals, unless he presented serious reasons. When this news reached the ears of James's parents, who had been unaware of everything that had transpired, they were greatly angered and filed an appeal in the same Curia, asserting that they would disinherit their son if he entered into these marriages. Meanwhile, serious disagreements and disturbances arose between the two families, which escalated daily, and a resolution was urgently sought regarding the betrothal, which was the cause of such discord. Therefore, the Bishop made every effort to persuade James's parents to abandon the betrothal with Christina, and also to soften James's persistent opposition to her; but without success.

[*Latin ed. p. 490*]

490 As the reconciliation of the marriage was approaching, and in order to establish a suitable precedent and avoid further scandals, the matter was brought back to a formal dispute; and after again consulting with the same judges who had presided over the previous proceedings, it was declared that James and Christina were to be joined in marriage, considering both the open opposition of James, for whom it would be utterly useless to impose ecclesiastical censures, and also the expressed and firm dissent of James' parents, who threatened him with disinheritance. (1) Christina's mother appealed to the Sacred Congregation, requesting that James either

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be compelled to take Christina as his wife, or that he be forbidden to make any other vows until the girl found another husband; and that, during the pendency of the dispute, the Archbishop be forbidden to bless the marriage that James might attempt. The discussion: The Synod's opinion seems to be that the marriage is valid. It is certain that a marriage contract consists of the mutual promise of both parties (L. 1 ff. de Sponsalibus), as stated by Canon Nostrates 30, question 5, and therefore it appears to be among those that are perfected solely by consent, since, with regard to its substance, no specific form or solemnity is prescribed, according to Engel, book IV, title 1, number 6; and it is certain that, apart from mutual consent, no other solemnity is required for a marriage to be valid. Nor does it matter whether the marriage is contracted secretly or in the presence of witnesses; for the Council of Trent, in Session 24 on Matrimony, openly rejected and condemned clandestine marriages, but did not utter a single word about clandestine betrothals, and therefore they are to be considered valid according to common law. Therefore, it seems sufficient for their proof, according to the judgment of both jurisdictions, to demonstrate that there was a mutual and voluntary promise of a future marriage, manifested by some external sign. However, all of this is asserted (1) It is unknown by what law the Archdiocesan Court has issued judgments twice in the same case! Perhaps due to some special privilege?

[*Latin ed. p. 491*]

491. In our case, the presence of betrothal cannot be doubted in any way. And indeed, it is clear that James, neither once nor twice, but freely, through an intermediary, and without any coercion, promised to lead a Christian life, as evidenced by the sworn testimony of the aforementioned intermediary, Andrea Scagnetti: moreover, he sent certain gifts to the betrothed woman through the same intermediary, which are still found in the hands of the aforementioned betrothed woman. Nor does it matter if James did not personally give the gifts and consent to the betrothal; for it is clearly evident that, just as marriages can be contracted through a procurator, so too betrothals, according to chapter 12, section 6, on Procurators, can be valid. Furthermore, to address the difficulty that may arise from the quality of the witnesses, namely that the intermediary is legally excluded from giving testimony, it should be noted that, in this case, it concerns a matter that James wished to conceal, and therefore the intermediary may be admitted as a witness in the absence of other witnesses, as Ferraris teaches in *Bibliotheca Canonica*, at the entry "testis" - there - the intermediary can be a witness when otherwise the truth cannot be ascertained; then he can even be compelled to testify in civil cases... and he can certainly be a witness in favor of marriage; Maschard, *De Probationibus*, council 1039, number 21; Pirhing, *De Testibus*, number 96. It cannot be objected that in this controversy there is only one witness, because it can be answered, as Pichler

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states in *Liber 2, title 20, number 34*: "One witness is sufficient when it is difficult or impossible to obtain more witnesses; thus, the interpreter is believed who is the only one who knows the language in which the instrument is written." Furthermore, Andrea Scagnetti has always been esteemed for his honesty and integrity, as many prudent and upright men testify. Moreover, another witness also exists to demonstrate the existence of the betrothal. For Paulina Rebeschini, residing in Culmore, ingenuously asserted that she heard James Bianchi conversing with Andrea Scagnetti about Christina Musani.

[*Latin ed. p. 492*]

492. CONCERNING MARRIAGES. When, moreover, in the absence of witnesses, relatives are also admitted, according to the opinion of some doctors, as Schmalzgrueber states in his work *De Iudiciis*, concerning witnesses, it cannot be rejected that John Musani, the father of Christina, testified under oath that he had heard from the father of the bride about these marriages, a matter well known to the Musani family. THESE MARRIAGES SEEM INVALID. On the other hand, one must proceed with great caution when it is a question of imposing a serious obligation on someone, and no one can be obligated unless it is legally certain that he has manifestly and freely willed to impose that obligation upon himself; for no one, without his will, can acquire rights or incur obligations. In order that this will may be legally proven, at least two suitable witnesses, free from all exceptions, are required; and a single witness, whatever his status, is not sufficient for legitimate proof, so that no legal dispute, the matter of marriages not excluded, can be concluded with the testimony of a single person, however legitimate. This applies both to divine law, Deuteronomy, chapter 17, verse 15: "One witness shall not rise up against any man, whatsoever the sin or wickedness be," and to canon law, canon *Admonere* 8, causes 22, question 2: "Neither the Gospel nor any divine or human law condemns or acquits anyone based on the testimony of a single witness, even if he is suitable." Finally, it applies to civil law, *Z. Iurisiurandi S. Cod. de testibus*. But in the case in question, neither the number of witnesses, nor their quality, nor what they testify, can in any way prove the existence of the marriages. And indeed, only a single witness is presented from the opposing side, namely, the mediator Scagnetti; the others, since they claim to have heard about the matter only from him, are not to be considered as distinct witnesses, but rather, they act in concert with him to whom they refer. For John Musani openly admits that he learned about the marriages from the parents of the bride, whom the same mediator informed. Even the testimony of Paulina Rebeschini must be considered of lesser value, because she herself acted as an intermediary, urging the mediator, Scagnetti,

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to work to bring about this marriage.

[*Latin ed. p. 493*]

REGARDING MARRIAGES 493: Since it is asserted that nothing of importance, uttered by James, was heard directly by anyone, but rather that the matter was learned through Scagnetti, if, therefore, the author of these confessions is the mediator himself, then the witnesses testifying about him do not constitute any degree of proof, as is observed in the decree of the Rota, number 23, before Arguel, and consequently, since the existence of a marriage can be demonstrated by a single witness, it can rightly be concluded that, according to the aforementioned principles of law, it does not legally exist, from which the legal maxim arises: "one witness, no witness." Furthermore, from the history of the facts, everyone can easily perceive that the witness was induced, and is therefore not an exception to the general rule. Indeed, he was not requested by James to intervene in the matter, but rather, on the contrary; moreover, abusing his position as a teacher, he sought to mislead the unsuspecting young man, so that he would respond to the desired girl, whose mother greatly desired this marriage to take place; therefore, he is not worthy to be heard. But if this single testimony is carefully examined, many things remain that demonstrate that the young man had no serious intention of entering into these betrothals. For, as can be gathered from the words of the same mediator, he had never known a Christian; but what was his age, his character, his appearance, and his wealth, are entirely unknown; and therefore, since the will cannot be attributed to an unknown person, it seems that James did not have the will to take her as his wife. Inappropriately, gifts were offered, as if they were tokens of love; for, besides the fact that it is not conclusively proven that these gifts were sent by James, since such things have no connection to marriage, one may doubt whether they were given with a serious or ironic intention, and therefore, nothing can be inferred from them. Briefly stated, the purpose was to resolve the doubt as to whether there existed a valid marriage between James Bianchi and Christina Musani in this case.

[*Latin ed. p. 494*]

494. RESOLUTION REGARDING MARRIAGE. The Sacred Office of the Holy Council, after due deliberation on the 20th of January, 1883, decided to respond: Negatively, and moreover. From which the following are deduced: I. The existence of a marriage cannot be inferred from any indication or popular rumor; but most conclusive arguments are required, which clearly demonstrate the will of the man and the woman; for the contract of marriage restricts the free will of the contracting parties in matrimony. II. Therefore, in the external forum, one must maintain the presumption of nullity of the marriage, or favor the liberty of the contracting parties, whenever the words or indications are doubtful, or do not provide complete

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proof. III. Proofs cannot be considered complete through the depositions of a single witness; because the statement of one is the statement of none; and because neither the Gospel, nor any divine or human law, condemns or justifies anyone based on the testimony of a single witness, even if suitable. IV. Witnesses brought forward in a particular case constitute only one degree of proof; because all testify to what one has affirmed, and because they have learned the same things from the same source and relate them.

[*Latin ed. p. 495*]

495 APPENDIX VII, in which are recorded the Masses and Offices extended to the Roman Clergy by a Brief of the Most Holy Pope Leo XIII, dated July 28, 1882. (1) ON THE NINTH OF OCTOBER (in Rome, on the tenth of October) To advance in those institutions, so that, as previously stated, we may attain to eternal happiness. Through the intercession of Saint John. Feast Day: Reading from the Epistle of the blessed Apostle Paul to the Corinthians: 2 Corinthians 4. Blessed are those who, according to the administration which we have received, not only have received mercy, but also minister it. Introit. Ecclesiasticus 42: "In His works, His works are praised; the light shines through all things, and the glory of the Lord is full of splendor; not walking in wickedness, nor adulterating the word of God, but commending ourselves to every conscience before God." Psalm 95: "Sing to the Lord a new song; sing to the Lord, all the earth." Glory be to the Father. Prayer: "For those who perish, the word of God is hidden; for God has blinded the minds of the unbelievers, that the light of the Gospel may shine forth in Christ, who is the image of God. For we do not preach ourselves, but Jesus Christ, our Lord; and ourselves as servants through Jesus; for God, who commanded light to shine out of darkness, has shone in our hearts, to give us the light of the knowledge of the glory of God in the face of Christ." (1) The Masses and Offices of Saint Benedict Joseph Labre and of John Baptist de Rossi had already been mentioned in Appendix I, page 41 of this volume.

[*Latin ed. p. 496*]

496 APPENDIX VII. Jesus. For all things are for your sake; that the grace, which abounds through many, may abound in thanksgiving, and that he who is outside may be corrupted, but he who is within may be renewed. *Omit Alleluia, al. Ps. 51. Like an olive tree bearing fruit in the house of God, I have hoped in the mercy of He forever and ever. Amen. And from day to day it shall flourish. For that which is present is momentary, and it is said: Alleluia. Paschal, Gradual Time, al. Ps. 61. In God is my salvation, and my glory: God is my strength, and my refuge. Therefore we are not wanting: but He abundantly increases our tribulation above measure, in the sublimity of eternal glory, working in us, not in those who contemplate what is seen, but what is not seen. For what is seen is temporal; but what

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is not seen is eternal. In those times: Jesus appointed seventy-two others, and sent them two by two before His face into every city and town where He Himself was about to go. And He said to them: "Then he saith to his disciples, The harvest indeed is great, but the labourers are few." Therefore pray ye that the Lord of the harvest may send forth laborers into His harvest." Go your ways: behold, I send you forth as lambs in the midst of wolves. Carry neither purse nor sandals, nor any other thing. Whatever house you enter, first say: Peace be to this house. And if a son of peace is there, your peace shall rest upon him: but if not, it shall return to you. And as for those who do not receive you, depart from that house and city: know ye that the kingdom of God is near. And as you go, preach, and say: The kingdom of God is come near. Behold, I have given you power to tread on serpents and scorpions, and over all the power of the enemy: and nothing shall hurt you. In one house or city you are received, let your peace come upon it: but if it is not received, let it be known to you that the kingdom of God has come. Luke. Luke 10. Following the Holy Gospel according to Luke. Gradual. Ps. 72 and 68. My heart was inflamed, and my reins were changed: in the shadow of thy face is life. al. Isaiah 49. He has made my mouth like a sharp sword: in the shadow of His hand He has protected me, and has made me like a chosen arrow. Alleluia, alleluia. al. Ps. 70. I am become a reproach to many, and my eyes are dim by reason of mine enemies. But I, when they were sick, I did them good. I said: I will not be reproached any more: but they did reproach me. They did reproach me for being faithful. I will not forget their wickedness: but their iniquity has come upon them. O God, help me: O Lord, quicken me.

[*Latin ed. p. 497*]

APPENDIX VII. 497 "Read what is appointed for you, and it will be, and there will be a garden irrigated; the sick who are in it will be healed, and you will say to them: The kingdom of God has approached. The offering of Christ is like a fountain of living waters, Psalm 80. Exultate Deo adjutori nostro: Jubilate Deo Jacob. I have accomplished all things according to the dispensation of God, which was given to me, that I might fulfill the word of the Lord. The secrets of God, who in obstinate sinners, stir up the hearts to repentance. Receive, O Lord, this offering of the holy and salutary sacrifice, and grant; may the blessed Leonard, through the intercession of the blessed John, your Confessor, be everywhere offered to you, powerful for the salvation of the nations. Through the Lord we are; so that through his prayers and merits, contrition may be wrought in our hearts. Communion: Philippians 3. These things have been a gain to me. What things are profitable through Christ. Through the Lord, we have been moved to tears. Let us read the Epistle of the blessed Paul the Apostle to the Ephesians. Ephesians 1. Blessed be God, the Father of our Lord Jesus Christ, who, in heaven, has chosen us in His beloved Son, that we might be holy and blameless in His

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sight, and might live in love. NOVEMBER (In Rome, on the sixteenth day of December) In Christ, as also in the example of your Confessor John, we strive to confess what we have believed, and to practice the works which He has taught.

DAY XXVI, in spiritual communion with John the Confessor.

He who lives and reigns.

He who predestined the adoption of sons through Jesus Christ, according to the purpose of His will, to the praise of the glory of His grace, in our Lord Jesus Christ. In whom we have redemption through His blood, the forgiveness of sins according to the riches of His grace which overflows in us in all wisdom.

MASS

Introit: Psalm CXXVIII.

In the beloved, we have redemption through His blood, the forgiveness of sins according to the riches of His grace which overflows in us in all wisdom.

Acts, Volume...

[*Latin ed. p. 498*]

APPENDIX VII. 498 Abundance, He would make it so. Powerful and prudent. So that the sacrament of His will may be known to us, according to His plan, to restore all things in glory and in riches in His house: and His justice remains forever and ever. We, who are called, are predestined in Him, Alleluia, born of His seed which remains in the world. In Him are both the things which are in heaven, and the things which are on earth, and His generation, the rulers, are blessed. Alleluia. In His Paschal place, Alleluia. f. Osee 14. His purpose is omitted, it is said: The just man shall flourish like a lily, and shall bloom forever. Alleluia. In Him we have hoped in the Lord. Alleluia. And you, when you heard the word of truth, (the Gospel of your salvation) in whom, believing, you were sealed in the Holy Spirit of promise, who is a pledge of our inheritance, to the redemption of the acquisition to the praise of His glory. Gradual. In those days: And after these things, the Lord appointed also other seventy-two. And he sent them two and two before his face into every city and place whither he himself was to come. Luke 10:1. And He said to them: The harvest indeed is plentiful, but the laborers are few. Luke 10:2. Therefore, pray ye that the Lord of the harvest may send forth laborers into His harvest. Luke 10:3. Go your ways: behold, I send you forth as lambs among wolves. Luke 10:3. Carry neither purse nor sandals, neither staff take you. Luke 10:4. For whatever shall be for you in the way, that take. Luke 10:5. And into whatever house you enter, first say: Peace be to this house. Luke 10:5. And if a son of peace be there, your peace shall rest upon him; but if not, it shall return to you. Luke 10:6. And stay in that house, and eat and drink such

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things as they give you; for the laborer is worthy of his wages. Luke 10:7. And as for you, go on; and say: The kingdom of God has come near to you. Luke 10:8. And whoever hears you in that place shall receive you, the same shall receive the kingdom of God. Luke 10:9. But whoever does not receive you, go your ways and say to him: The dust of your feet be against that city. Luke 10:10. Behold, I send you forth as sheep in the midst of wolves: be ye therefore wise as serpents, and innocent as doves. Luke 10:16. Sequence of the Holy Gospel according to Luke. Luke 10. Ps. 91. The just man, as a cedar, shall flourish in the house of the Lord.

Alleluia.

f. Isaiah 52. How beautiful are the feet of him who brings good news, of him who announces peace; of him who says to Sion: Your God reigns! Alleluia.

After Alleluia, the following verse is omitted: Blessed is the man who fears the Lord, who delights greatly in His commandments.

Tractus Ps. 111.

[*Latin ed. p. 499*]

499, ix, vii. And whensoever you enter into any city, and they receive you, eat and drink: and say to them: The kingdom of God is come near unto you.

Offertory:

2 Corinthians 1:3.

O Lord Jesus Christ, who to the blessed Pope Urban, for the liberty and glory of your Church, didst grant sufficient grace and made us fit ministers of the new covenant; grant that we may offer to you, through the intercession of your most holy Cross, a spotless sacrifice, that, with our souls striving in the battle against the enemies of your name, we may always persevere in good works.

Communion:

2 Corinthians 3:14.

We beseech you, O God, that through the merits of Christ, who lives and reigns, you may strengthen us, that we may deserve to receive the grace of eternal glory.

Postcommunion:

Through the same Lord.

IN II. NIGHT OFFICE.

iv.

Let us pray for reconciliation with God.

Since the eleventh century, the Church has been divided by a most grievous discord between the spiritual and the temporal powers, with no

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less fortitude than other Popes, who in those times obtained the Roman See. Urban the Second, Odo by name, who preceded him, came from a noble family near Castellion, not far from Rheims. He was a man of great learning, having devoted himself to logical studies, and afterwards to philosophy, and for his excellent virtues, he was held in high esteem in the Church. He founded the Carthusian order, and was a most celebrated Pope.

August 19th.

FEAST OF SAINT URBAN, POPE AND CONFESSOR.

All things pertaining to the Confession of the Pontiff.

[*Latin ed. p. 500*]

APPENDIX VII. He obtained the canonry at Rheims. Weary from diligently attending to the affairs of the celebrated monastery of Cluny, and afterwards of Bain, and of all of Clermont, he also cared for those of Cava de' Tirreni. A council, most auspiciously convened in the sacred monasteries, was held, which, adorned with the salutary sign of the Cross, was called the Council of the Cross. Following the footsteps of Saint Gregory the Seventh, a man of great power and eloquence, he, in his time, and Urban, who had been a poor pontiff, created Cardinal of Ostia, without the aid of kings, without any levy or tribute from the Holy Roman Empire, vindicated the supreme power of the Church against the arrogance of great princes and nobles, and of others of every order, status, and kingdom.

1. "I have found David." He gathered a multitude, who, with eager spirit and alacrity, prepared for a difficult expedition; for whom the Supreme Pontiff proclaimed an indulgence, the sole hope of salvation for sinners, and eternal life as a reward.

Lectio v.

He visited the mountain of Casinum, where he venerated the sacred relics of the most blessed Father Benedict, and, through his intercession, was miraculously healed of a stone ailment from which he had long suffered.

Lectio vi.

He consecrated the monastery of Cava de' Tirreni and the Church of Saint Nicholas, and in the Basilica of Bari, he held a council, where he solemnly refuted the errors of the Greeks. In that council, zealously devoted to the most blessed Mother of God, he ordered the clergy and laity to recite special prayers in her honor, so that those who were not able to participate in the expedition, or who, as soldiers, were fighting for the cause of religion, might at least offer their prayers in her support. From this arose the veneration of the Blessed Virgin Mary, which is celebrated

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even today, both on Saturdays and on other days. Furthermore, it is said that he instituted other councils in various places, and that the faith and discipline of the Church were strengthened through them. Afterwards, the Archbishop of Canterbury used to say,

[*Latin ed. p. 501*]

Hear me, O Virgin, who, already restored to tranquility by Henry with the entire Imperial army of Italia, and whose Church had happily emerged from the oppression of heresy, full of merit and glory, in the year one thousand nine hundred and ninety-nine, on the twenty-ninth day of July, in a glorious manner, passed from this life, having labored for the Church, and having strengthened the Chair of Peter through the power of the Cross; grant that, through the intercession of your immortal and most holy soul, we may merit to overcome the enemies who assail our souls on earth, and to receive honor and consolation in the Basilica of Saint Peter, amidst the profound sorrow and lamentation of the entire world, as the thirteenth Supreme Pontiff, Blessed Urban Second, received the glorious crown.

Who lives and reigns forever. Amen.

From Leo, it has been three years, and there, in the City, the Cult is exhibited. We offer you, O Lord, sacrifices of propitiation for the triumph of the Christian faith, that, through the intercession of Blessed Urban the Confessor, your ministers may be able to overcome the enemies of the faith. The Sacred Congregation of Rites has approved and confirmed this. The Pontiff has graciously granted an Indulgence to the Clergy of Rome, Rheims, and Toulouse, to be celebrated annually with the Office and Mass in honor of this Saint.

II. At the Second Nocturne, strengthen us, O Lord, in spirit; that, refreshed by the blessed Pontiff Urban, we may eagerly walk before your sanctuary.

Through our Lord Jesus Christ. Amen.

ON THE ELEVENTH DAY OF OCTOBER, THE MASS OF BLESSED JOHN LEONARD.

Double Mass.

It was decreed by the Pontifical Commission for the Celebration of the Feast, with the Gospel: "Vigilate de eo" (Hom. Evang.).

This is the place.

In the Postcommunion, to be said:

Through our Lord Jesus Christ. Amen.

DAY XI OF OCTOBER.

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B. JOANNIS LEONARDI C.

Mass.

Double Mass.

It was decreed by the Pontifical Commission for the Celebration of the Feast, with the Gospel: "Vigilate de eo" (Hom. Evang.).

This is the place.

In the Postcommunion, to be said:

Through our Lord Jesus Christ. Amen.

[*Latin ed. p. 502*]

APPENDIX VII. In the hymn *Iste Confessor*, the third verse speaks of the cultivation of the spiritual life of the faithful, and mentions several young men of noble character.

O God, who didst deign to bless John, the Confessor, in the nations, and through him didst wonderfully stir up the clergy with a devotion to their own sacred office, we beseech Thee: grant that, through Thy family, we may be delivered from the rudiments of Christian doctrine, and that we may progress in the path of eternal blessedness, according to Thy institutions.

Through our Lord Jesus Christ.

In the Nocturnal Readings of Scripture, Lesson IV, paragraph 1:

In Lugo, where the hatred of citizens burned fiercely and the morals were corrupt, piety seemed to have revived in a short time.

Lesson V.

John, born in the town of Decimi, not far from the city of Lugo, was descended from pious and honest parents. From his earliest years, he showed a love for solitude and prayer, and displayed a certain gravity and maturity. At the age of twenty-six, having been called to the ecclesiastical militia by God, John encountered fierce attacks from wicked men, who, even at the time of his ordination, sent false accusations against him to the Supreme Pontiff. And although he was a young man, newly instructed in the rudiments of the Latin language, and although his family was forced to endure much hardship, he persevered. Moreover, stirred up by the devil, he encountered all manner of trials, so that even those who had recently been promoted to the priesthood, and who were eager to help him, were forced to abandon him. But, with great eagerness, he sought after God, and, with all his strength, he persevered in good works.

[*Latin ed. p. 503*]

APPENDIX VII. 503. Many waters could not extinguish the charity which inflamed the people of Italy. The Men of God, guided by the Congregation, which admirably pursued the divine work of providing whatever was necessary for the glory of Jesus Christ, did not cease to

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strive, even if it meant suffering; they did not abstain from offering help to the infidels, if they could. Pope Gregory XIII, in his wisdom, joined Vives, a most pious man, to the Congregation, and constantly maintained the fruits of his Apostolic labor, and, indeed, even increased the benefits to the Republic of his homeland. Because of his singular prudence, known in difficult and delicate matters, he was often consulted by bishops and priests throughout the land, who sought his counsel for the good of souls, and he was rightly considered an author of the most excellent instructions for composing sermons and for the edification of the churches. Furthermore, he was delegated by the Roman Pontiff, with universal authority, to promote the Catholic faith throughout the world, to resolve intricate disputes, and to reform religious families concerning sacred and moral matters. He also wrote many works on religious matters, which were most beneficial to the condition of men. Likewise, he was devoted to Saint Joseph Calasanctius, and was of great help to his almost collapsed society. Never failing in his sacred ministry, and devoting himself throughout his life, not only to his own, but also to the entire clergy, he set an example, in the Holy Spirit, to the monks of the monastery of Saint Francis in Rome. He was loved by all. He died in Rome, on the ninth of October, in the year 1669, at the age of sixty-six years. This man, illuminated by sanctity, divine gifts, and miracles, greatly grieved the distant peoples who still resided in darkness, and the Supreme Pontiff, in the annals of the Blessed, kindled the light of the Gospel. This man, inflamed by the desire to spread the true religion, was, according to Saint Philip Neri (from whom he was called the Reformer), a follower of the Lord, as is written in the Nocturnal Office of the Gospels, in the lessons designated for the Confessors.

[*Latin ed. p. 504*]

APPENDIX VII. On the seventeenth day of December, with exceptional piety, rather than noble lineage; who, with his children, established a good foundation for the soul, and, with the favor of Divine Grace, instituted everything with the utmost care, fearing the Lord. It was a marvel to see or hear him in the temple or at home, whether pouring forth fervent prayers to God, or exhorting his peers to devotion. This young man, sent to Rome for the purpose of study, made great progress in the new College, and shone forth especially in the sanctity of his life. Daily progressing from virtue to virtue, so that he might serve God more closely, and, as if to prepare the blessed Leonard the Confessor for the religious life and to make him strive with all his might through his works and words, you made him powerful: we beseech you; that through his prayers and merits, we may be able to elicit tears of contrition. And it happens that in the Nocturn, on the Feast Day, readings from Scripture are read. In the readings for the Four Seasons, and although this nephew was greatly loved by him, and he might have drawn him back from such a plan, yet, with less regard for those

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persuasions, he thought of enrolling him in the brotherhood of the stricter observance, especially captivated by their modesty and extreme poverty. B). He did what was honorable. The blessed man, in the same Commemoration, in the second Nocturn, in the first reading, and in the fourth reading, he had nothing older than the perfect examples of the Seraphic Father. Mauritius, born in Liguria, Italy, scarcely a cleric, changed his name to Leonard, desiring...

[*Latin ed. p. 505*]

APPENDIX. Till. 505 was inflamed with a burning zeal, desiring to spread the Gospel in all lands, so that he might pour out his blood for the souls of the unbelievers, for the most excellent cause of Christ, which would bring forth the sweetest fruits. But the divine providence, especially through the odor of his holy life, made it manifest everywhere. Having composed himself in old age, and having consumed his time with theological studies, he diligently sought to cultivate himself, so that he might be prepared for every good work. Having been appointed to the Sacred Order, he was, without having received any initiation beforehand, sent by Pope Benedict XIV to Quarten, and, having been marked with the priestly character and dedicated to labors, he knew that he would die in Rome, and, returning to this city from Bologna, and from other most cultivated cities of Italy, he began to be afflicted by a disease, by which it became clear to him that he would soon have to depart this life. Having followed the Apostolic way of life, and having entered a monastery, content with a simple habit, he immediately desired to be ministered to with the sacraments of the Church, and, although his body was weak, he felt the fruit of the Lord most peacefully, enduring with admirable fervor, and without reluctance, the dangers, difficulties, and hardships, and the labors that were not undertaken. Thus, he rested in the kiss of peace. After him followed many years, during which Leonardo, for more than forty years, lived with unyielding joy, and, after his death, miracles were manifested, which were rightly approved, and by which Pope Pius VI, the Most Holy Pope, added him among the blessed in heaven, to the great profit of souls and the increase of religion. R). Amavit eum. And now, having begun to care for the signs, Pope Pius Nonus, the Most Holy Pope, added this most excellent herald of the Word of God to the catalogue of Saints. R). This man. He was a preacher of the Gospel to the people, and countless conversions followed from hearing him. Indeed, even the hardest and most iron hearts were broken, and they were converted to penance, so much was he admired for his sermons. He is mentioned in III. de Homilia, and in the Nocturnal Lessons of the Gospels, de Comm. I$R).

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de Evan. Conf.

[*Latin ed. p. 506*]

506 FROM THE SACRED CONGREGATION FOR RITES, A DECREE whereby the feasts of Saint Benedict, Abbot, Saint Dominic, of Terna, and Saint Francis of Assisi are raised to a higher double rite. AND A DECREE FOR THE WHOLE WORLD: The secular celebrations, with great joy for the Catholic people, commemorating the illustrious Father of the Monks in the West, and the seraphic Patriarch of Assisi, which have been celebrated in recent years, have aroused a great desire that the cult of these holy men might receive some increase each year by the entire Church. We marvel at the wonderful benefits which they have seemed to have conferred upon the Christian and civil commonwealth. It was deemed fitting, and indeed, more so today, that, lest, through the immutability of the rubric concerning the translation of feasts, the offices of these saints, especially those of the most illustrious Father of the Monks, might often be reduced to a simple rite, or even be entirely omitted; this should not happen. The Most Holy Pope Leo XIII, for his special and outstanding piety and devotion towards both these admirable founders, and also heeding the humble requests made to him by some Sacred Prelates, decreed to readily and generously grant these desires. However, he wished that the venerable Dominic Gusman, who, bound to the Order of Friars Minor by a close friendship, was joined to the venerable Father in charity, and who defended the integrity of heavenly doctrines, and repelled the errors of heretics with the light of Christian wisdom during that time, and by whom, with God leading him to great things, Christians were encouraged, and many who were far astray were led to imitate Christ (September 7, 1882). Therefore, (In Ep. Endel. SSmi Dñi Nostri Sanctitas Sua), he commanded that the feasts of the holy Confessors, Saint Benedict, Abbot, on March 21, Saint Dominic Gusman, on August 4, and Saint Francis of Assisi, on October 4, which have hitherto been inscribed in the universal calendar under a lesser double rite, be raised to a higher double rite. Furthermore, he commanded that a decree concerning this matter be issued by the Sacred Congregation for Rites, which was done in the year...

[*Latin ed. p. 507*]

DECREE 507, to be executed wherever applicable. Notwithstanding any contrary provisions. April 5, 1883. At the place, CARDINAL BARTOLINIUS, S. R. C., Prefect. Lawrence C., Secretary. SEAL OF THE HOLY ROMAN CHURCH. DECREE, by which the Ordinary of each place is again urged to adopt, in their respective dioceses, the edition of the liturgical books, recently printed in Ratisbon, by the Sacred Congregation of Rites, and also to maintain uniformity in the chants, so that those parts which are indicated by musical notes, in the new editions of the Missals, Ritu-

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als, and Pontificals, shall conform to the standard of that same edition. The solicitude of the Roman Pontiffs, as regards matters pertaining to the sacred liturgy, has also excelled in this, that the dignity and uniformity of ecclesiastical gatherings, and especially of the Gregorian chant, have always been considered by the Holy Council of Trent. Therefore, when, following the deliberations of the Synod, Pope Pius IV appointed several Cardinals of the Holy Roman Church to the reform of liturgical chant, they devoted all their care to bringing such chants to a more suitable and simpler form, so that they might be easily received and adopted by all who love the divine psalmody. Much was achieved in this endeavor thanks to the diligent industry and outstanding expertise of Master John Peter-Aloysius of Praeneste, who, according to the most prudent standards, preserved the Roman Gradual, both in its own proper character and in its genuine Gregorian form. Subsequently, Pope Paul V perfected the Roman Gradual in the printing of liturgical chants, so that the characters were corrected as ordered by the Most Holy Father, and the Apostolic Letter *Quo ex emendationem atque Mediceis forma in eo reductum* approved it in brief. It began to be used in the Papal Chapel, and in the Patriarchal and other more important churches of the city. Several disciples of Peter-Aloysius of Praeneste, at the command of the Roman Pontiffs, continued the work that he had begun. In our time, when the Most Holy Pope Pius IX happily observed the Roman liturgy being adopted in almost all churches, he also had a desire to introduce uniformity in liturgical chant. Therefore, through the Sacred Congregation of Rites, he established a special commission of learned men for ecclesiastical chant, who, under his guidance, produced an edition of the Gradual, following the standards of Paul V.

[*Latin ed. p. 508*]

508 DECRETUM should be promulgated, and the other parts, which were lacking in that same chant, should be completed according to the standard of the Gradual. Following this intention, the Sacred Congregation of Rites, having published circular letters through the aforementioned Commission on January 1st of the year 1868, under the name of the Supreme Pontiff, invited the printers and publishers of liturgical books, both national and foreign, who desired to contribute to this honorable and beneficial work, under the direction of the Commission and the auspices of the Sacred Congregation. But since all recognized that it would be a very important undertaking, requiring great expense and the utmost diligence, Frederick Pustet of Ratisbon, a Knight of the Supreme Pontiff and Printer of the Sacred Congregation of Rites, undertook this work with great effort, and successfully completed it, as far as the Gradual was concerned. Therefore, the Roman Gradual of Paul V, perfected by the aforementioned Commission with mature study and care, carefully revised by it, and declared authentic, so that it may rightly be called the Roman edition. It was

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also highly praised by the Supreme Pontiff Pius IX in his Brief letters dated May 3rd of the year 1873, and he strongly recommended it to the Most Reverend Ordinaries and to all those who are concerned with sacred music, with the added exhortation to the Editor himself, that the volumes still to be published concerning the Gregorian chant, which had been begun by Paul V, should finally be brought to light. Therefore, when the same printer, with equal diligence and according to the aforementioned standards, had completed that part of the Antiphonary and Psalter which comprises the Hours of the day, the Most Holy Pope Leo XIII issued Apostolic Letters in the form of a Brief on November 15th of the year 1878, in which, confirming the decrees of his predecessor, he approved the aforementioned edition, having it revised by experts in sacred music, appointed for that purpose by the Sacred Congregation of Rites, and declared it authentic; and, using the same words that the Most Holy Pius IX had used for the published Gradual, he gave a strong commendation of this edition to all the Most Reverend Ordinaries and to all those who cultivate sacred music, so that in all places and dioceses, both in what pertains to the sacred Liturgy and in chant, a single and the same standard should be observed, as is used by the Church of Rome. In the meantime, more and more cultivators of ecclesiastical music have begun to inquire more deeply into what was the original form of the Gregorian chant, and what variations occurred in subsequent ages. But, having gone beyond the limits of this investigation to a greater extent, and perhaps carried away by excessive love of antiquity, they have been seen to neglect recent...

[*Latin ed. p. 509*]

DF.CUET U M 509 The ordinances of the Apostolic See, and its desires for the introduction of uniformity in Gregorian chant, according to the most prudent custom of the Roman Church, have been repeatedly expressed. Indeed, after this matter had already been wisely established, they still considered it necessary to strive to obtain that form of Gregorian chant which they believe to be the most ancient, and to ensure that the chant of the edition published by the Apostolic See be declared authentic, and even highly commended, or at the very least, not imposed upon individual churches; failing to realize, as they ought to have, that the constant practice of the Supreme Pontiffs has been to remove certain abuses more through persuasion than through commands; and knowing well that the ordinaries of Roman dioceses, and their clergy, are accustomed to interpret the exhortations of the Supreme Pontiffs piously. These reasons, which should have been considered, were disseminated through periodicals and various published works, and the approval of the aforementioned edition itself was called into question. Therefore, the Sacred Congregation, in the exercise of its office, issued Apostolic Letters, namely those of Pope Pius IX, declaring the previously published edition to be authentic, and confirming

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the approval of that same edition, by a decree issued on April 14, 1877. Nevertheless, they did not agree with this decree, nor with the subsequent Apostolic Letters of the Most Holy Lord mentioned above; rather, they felt it necessary to more forcefully impress their opinions in the aforementioned assembly of ecclesiastical musicians, which was held in Arezzo the previous year, much to the offense of those who believe that the authority of the Apostolic See, no less than in other matters pertaining to the Sacred Liturgy, should be followed in matters of chant, both in terms of reason and uniformity. However, whatever may have happened in this matter, since those who were present in Arezzo on this subject humbly presented certain votes, or proposals, to the Most Holy Lord Leo XIII, seeking his judgment; the same Most Holy Lord, with particular attention, entrusted the matter to the Sacred Congregation for Sacred Rites, which is responsible for guarding the traditions, and to certain high-ranking officials of the same Sacred Congregation, to examine it. The special Congregation, assembled below, after mature and thorough consideration, and after reviewing all matters pertaining to the subject, and after the most exquisite opinions of the most learned men, it was deemed fitting to decide: thus, if the Most Holy.

[*Latin ed. p. 510*]

5. Regarding the Decrees concerning Vows or Postulates issued by the Aretino Convent concerning the Gregorian liturgical chant, and submitted to the Apostolic See by the same, which are accepted as they are stated, they cannot be received as binding. For, while ecclesiastical chant has always been, and will continue to be, free and open to inquiry, for the sake of its development, it is customary for learned men to discuss and investigate the ancient form of ecclesiastical chant, and its various phases, as well as other aspects of the Sacred Liturgy, with the greatest commendation; nevertheless, only those sanctions concerning the authentic and legitimate form of chant, which are considered to be the Gregorian chant, as approved by Paul V, Pius IX, and Our Most Holy Lord Pope Leo XIII, and by the Sacred Congregation of Rites, according to the edition adorned in Trent, are to be considered as containing the sole and proper chant of the Roman Church. Therefore, concerning this authenticity and legitimacy, there is no need for further inquiry among those who sincerely obey the authority of the Apostolic See. In order that the chant used in the Sacred Liturgy, strictly speaking, may be uniform everywhere, in new editions of Missals, Rituals, and Pontificals, those parts which are indicated by musical notes must conform to the standard of the aforementioned edition approved by the Sacred Congregation, as it contains the liturgical chant proper to the Roman Church (as indicated by the title on the front of each book); and they must be entirely in accordance with that text. Furthermore, although, according to the most prudent method of action of the Apostolic See in introducing uniformity in the ecclesiastical liturgy, the aforementioned edition is not

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imposed upon individual Churches, nevertheless, it again strongly urges all Ordinaries and other ecclesiastical authorities to take care to adopt it in the Sacred Liturgy, so that the reverent singers may preserve the uniformity of chant, as many Churches have already commendably done. This was decreed on April 10, 1883. These matters are faithfully reported to Our Most Holy Lord Pope Leo XIII by the undersigned Secretary, and His Holiness approved and confirmed the Decree of the Sacred Congregation, and ordered it to be made public on the 26th day of the same month and year.

D. CARD. BARTOLINIUS, Prefect.

Locogg.

Seal.

Lawrence Salvati, S. B. C.

Secretary.

[*Latin ed. p. 511*]

51. DECREE OF ROTHOMAGEN. Concerning the Beatification and Canonization of the Venerable Servant of God, John Baptist de la Salle, Founder of the Congregation of the Brothers of the Christian Schools. By Decree of the Congregation for Sacred Rites, dated May 23, 1879, under the benign concession of Our Most Holy Pope Leo XIII, it was decided that, without the intervention and vote of the Consultors, a meeting of the Ordinary Session of said Sacred Congregation should be held, concerning the validity, by Apostolic Authority, of the proceedings regarding the three miracles attributed to the aforementioned Venerable Servant of God, John Baptist de la Salle. The Cardinal, John Baptist Pitra, Prefect of the Venerable Reverend Father Robustian de la Salle, in his capacity as General Procurator of the Congregation of the Brothers of the Christian Schools, and as Postulator of this Cause, in a special session of the aforementioned Sacred Congregation for Sacred Rites, constituted according to the particular provisions of the same Most Holy Pope, Our Lord, issued on November 20, 1878, and convened at the Vatican on the designated day, proposed the following question: "Whether it is established that the proceedings concerning the Parisian miracles, produced legitimately, have been rightly and correctly examined by the Authority, and whether, in the case and for the purpose for which they are presented, the testimonies of the witnesses have been duly examined by the Apostolic Dioceses of Rothomagen?" Furthermore, the Sacred Congregation, after considering all matters, and having heard the voice and written opinion of the Reverend Father, Promoter of the Holy Office, declared: "Affirmative, that is, it is established." February 13, 1883. Subsequently, a faithful report of these matters was presented to Our Most Holy Pope Leo XIII, and His Holiness approved and confirmed the judgment of the Sacred Congregation on the

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15th day of the same month and year. D. CARD. BARTOLINIUS, S.R.C., Prefect.

[Seal]

LAURENTIUS SALVATI, S.R.C., Secretary.

[*Latin ed. p. 512*]

512 FROM 8. TO THE CONGREGATION FOR THE PROPAGATION OF THE FAITH: Circular letters to the Bishops of Ireland, in which it is stated that collections of money cannot be approved if they appear to be obtained by some kind of force or intimidation. Most Reverend Sir, Whatever may be the case regarding the person of Parnell and his plans, it has been ascertained that several of his associates have, in many cases, employed methods of conducting such collections that are entirely contrary to those which the Supreme Pontiff declared to the Archbishop of Dublin, and which are contained in the instructions of this Congregation and unanimously adopted by the Bishops of Ireland at the recent meeting in Dublin. Indeed, alongside these prescriptions, it is permissible to seek relief for those afflicted by misfortune, it is permissible to contend for one's rights, but it is always necessary to observe that divine precept, that one must first seek the Kingdom of God and His justice; it is improper, however, to defend a cause, even if just, by unjust means. Furthermore, it is the duty of the clergy, and especially of the Bishops, to temper the passions of the people and to restore moderation in all things through timely exhortations, lest, led by excessive greed, they see advantages in false judgments, or place the hope of public happiness in shameful acts. Therefore, it is not permitted for clerics to deviate from these rules, nor to involve themselves in those movements that are entirely unsuitable for appeasing the minds of men, nor to strive to promote them. It is certainly not forbidden to contribute money to improve the condition of the Irish people; however, from the aforementioned Apostolic mandates, those collections must be entirely condemned which are proclaimed to inflame the passions of the people, so that men may easily be abused into undertaking turbulent actions against the laws. Moreover, one must abstain from such collections, because it is clearly evident that hatreds are thereby aroused, that accusations are heaped upon individuals, and that crimes and murders, by which scandalous men have defiled themselves in every way, are not at all disapproved of; especially where it is asserted that the measure of true love for the homeland is to be estimated by the money given or withheld, so that men appear to be compelled, as it were, by force or intimidation, to contribute to these things. With these things established, it must be understood that the collection of money that was made for the Parnell testimonial fund cannot be approved by this Holy Congregation, and therefore it is not permissible for ecclesiastical men, and especially for Bishops, to commend or promote it in any way. In the meantime, I pray God to preserve Your Eminence for a long time. Given in Rome, from the

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Office of the Sacred Congregation for the Propagation of the Faith, on the 11th of May, 1883.

[*Latin ed. p. 513*]

513 By the Divine Providence of Our Most Holy Father LEO XIII, Pope, the Constitution Concerning the Law of the Third Order of St. Francis, Secular. LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD. For the perpetual memory of the matter, the Merciful Son of God, who, with His sweet yoke and light burden, has consulted for the life and salvation of all, has not only founded the Church, but also, through His mercy, has redeemed it, so that through it, benefits may be extended to all the ages. Therefore, just as the wisdom and invincible greatness of kindness shone forth in all the things which Jesus Christ did or commanded in His life, so likewise, in all the institutions of the Christian republic, there shines forth a wonderful gentleness and mildness, so that the Church may seem to practice, even in this very matter, the likeness of God, who is Charity (1). It is, however, the most proper function of this maternal piety to adapt the laws, as far as possible, to the times and customs, and always to use the utmost equity in prescribing and demanding. And by this custom of charity, let wisdom be imitated, so that the Church may join absolute and eternal immutability of doctrine with prudent variety of discipline. Having thus prepared our mind and spirit, We, in the judgment of Our office, consider the nature of the difficulty which We encounter in carrying out Our task, the times, and all that may deter from the exercise of virtues. And now, it has seemed fitting to consider, according to this norm, whether the laws of the Third Order of St. Francis, which is called secular, ought to be diligently examined and tempered in view of changed times. This illustrious institution of the father St. Francis, We have commended with great zeal to piety through Encyclical Letters, Auspicato, which We issued on the XVII of September of the past year (1) I John I, 4, 16. Acts. Vol. XV, p. 679.

[*Latin ed. p. 514*]

514 CONSTITUTION regarding the Christian pursuit of holiness, by which we, at the appropriate time, recall and renew. The origin of both the evils that plague us and the dangers that are feared lies in the neglect of Christian virtue. Others can heal and others can be spared only by turning, both privately and publicly, to Jesus Christ, through whom God can be appeased (1). Indeed, the entire work of St. Francis is dedicated to this purpose: the most holy founder, through his own example, established institutions for observing the precepts of Jesus Christ, and he sought nothing other than that Christian life should be practiced more diligently, as if in a certain arena. Certainly, the two earlier Orders of St. Francis, informed by discipline, pursue a certain divine perfection of great virtues;

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but few are those to whom God has granted the grace to pursue the holiness of the evangelical counsels with such zeal. The Third Order, born of a different nature, is suited to strive for just and virtuous conduct among the multitude, and to the extent possible, to emulate the religious monuments and practices of former times. We must, however, refer the merits and the help of good counsel to God, who has accepted these things, because the ears of the Christian people have not been deaf to our exhortations. Indeed, in many places, devotion to St. Francis of Assisi has been aroused, and the number of those who seek membership in the Third Order has increased. We are therefore determined to remove any obstacles or delays that might hinder this salutary progress of souls. And first, we have observed that the Rule of the Third Order, which our predecessor, Pope Nicholas IV, approved and confirmed by an Apostolic Constitution on August 18, 1309, does not entirely correspond to the present times and customs. Hence, certain offices cannot be performed without annoyance and excessive labor, and many of the articles of the law have been relaxed by the prayers of the members; which, it is easily understood, cannot be done without detriment to common discipline. Furthermore, there was another cause within this same association that called for our attention. Namely, our predecessors, the Roman Pontiffs, have embraced the Third Order with the greatest benevolence, and have granted numerous and ample Indulgences to the members for the remission of sins. The effect of these Indulgences, however, has become more complicated over the years, and often there has been contention as to whether a certain pontifical Indulgence was valid in certain cases, and for what length of time.

(1) Hebrews 7:25.

[*Latin ed. p. 515*]

CONSTITUTION regarding which matter it was permissible 515. Certainly, the Apostolic See has not lacked foresight in this matter; and, specifically, Benedict XIV, Pope, in his Constitution *Ad Romanum Pontificem* of March 15th, in the year 1741, took care to dispel former doubts; but, as is often the case, new ones arose. Wherefore, having been moved by the sacred Council to consider Indulgences and sacred relics, and in order to safeguard the matter, We appointed several Most Eminent Cardinals, who, with due care, were to examine the ancient laws of the Tertiaries; also, they were to examine all Indulgences and privileges recorded in the commentary; and, using their wise judgment, they were to report to Us on this matter, stating what they considered should be retained in view of the present circumstances, and what should be changed. After the matter had been dealt with, as was required, these Cardinals were of the opinion that the ancient laws should be amended and adapted to the present customs of life, and that some chapters should be altered; regarding Indulgences, however, they considered it necessary to take measures to prevent any

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danger, so that nothing might be done contrary to law. Following the example of Benedict XIV, We, acting wisely and usefully, decreed that all Indulgences previously in force should be revoked and abrogated, and that certain others should be newly established for the same confraternity. Therefore, that what is good and blessed may be accomplished, that the glory of God may be increased, and that the study of piety and other virtues may be more encouraged, We, by these Letters, with Our apostolic authority, renew and confirm the Law of the Franciscan Order of the Third Order, which is called the Secular Order, in the manner described below. However, with this action, We do not intend that anything should be taken away from the nature of the Order itself; rather, We wish and intend that it should remain entirely unchanged and intact. Furthermore, We wish and command that the same members may enjoy the remissions of penalties, or Indulgences, and privileges, which are indicated below, as well as all those Indulgences and privileges which the Apostolic See has granted to this confraternity from time to time, by whatever means, or name, or form, up to this day.

Law of the Franciscan Secular Third Order, CHAPTER I, CONCERNING ADMISSION, TRYOUT, AND PROFESSION. § I. No one shall be admitted unless he is at least fourteen years of age, and is of good character, and maintains harmony, and, above all...

[*Latin ed. p. 516*]

CHAPTER 8. CONCERNING THE HOLINESS OF THE CATHOLIC ORDER, and its obedience to the Roman See and the Apostolic See.

§ I. Married women shall not be admitted, unless with the knowledge and consent of their husbands, except when it seems otherwise advisable, with the authority of a priest, judge of their conscience.

§ III. Those admitted into the sodality of the Little Scapular and the cord shall wear them; if they do not wear them, they shall be deprived of the privileges and rights pertaining to the order.

§ IV. Those who enter the Third Order shall undergo a probationary period of one year; after which, having duly professed in the Order, they shall promise to observe the laws of God, and to obey the dictates of the Church; and if they should fail in anything of that which they have professed, each one shall promise to make amends.

CHAPTER 11. CONCERNING THE RULE OF LIFE.

§ I. Members of the Third Order shall, in all their conduct and habits, observe the rule of moderation, setting aside all excessive elegance and extravagance, and conforming to what is fitting for each individual.

§ II. They shall abstain with great caution from dances, games, and theatrical performances, as well as from very lavish banquets.

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§ III. They shall use food and drink with moderation, and shall rise and sit at the table with decorum.

§ IV. They shall observe the fast of Mary with frugality; and neither before nor after shall they eat or drink without first invoking God piously and with thanksgiving. On the eve of sacred feasts and solemnities, each shall serve the Virgin Immaculate, and also Saint Francis, and it is highly commendable if anyone should, in addition, observe the fast on Saturdays, or abstain from meat on certain days of the week, according to the ancient discipline of the Tertiaries.

§ V. Those admitted shall perform acts of penance for a period of one month; and they shall attend the Divine Office for a period of one month.

§ VI. Clerics of the Third Order, who daily recite the Psalms, shall, in addition to these, fulfill their canonical and Marian obligations, and shall recite the prayers that are due, namely, the Our Father. The laity, who do not recite the Little Office of the Blessed Virgin, the Angelic Salutation, and the Gloria Patri twelve times on each day, shall be excused if they are unable to do so because of illness.

§ VII. Those who have a will to make shall, in their own time, make their will.

§ VIII. In their family life, they shall strive to lead others by example, and shall promote good works and virtues. They shall not allow books or diaries, from which vice might be feared, to be brought into their homes, nor shall they allow those who are under their authority to read them.

[*Latin ed. p. 517*]

CONSTITUTION § IX. 517 They diligently safeguard mutual charity, both among themselves and towards others. They should strive to resolve any discord that may arise. § X. They should never swear, except when absolutely necessary. They should avoid frivolous talk and vulgar jokes. In the evening, they should examine themselves to see if they have done anything rashly; if they have, they should correct their error through penance. § XI. Those who can, should attend daily Holy Mass. They should also attend the monthly meetings convened by the Prefect. § XII. They should contribute to the common fund, each according to his ability, so that the needs of the sodality, especially those related to charity, may be met, or so that the dignity of divine worship may be enhanced. § XIII. When a member of the sodality is ill, the Prefect, or someone designated by him, should visit him, or should perform acts of charity on his behalf. Likewise, in cases of serious illness, they should offer encouragement and, at the appropriate time, provide what is necessary to comfort the sick person. § XIV. When a member of the sodality dies, the members, whether lay or clerical, should attend the funeral. They should recite the Trisagion, the Marian prayers, and the Rosary, dedicating one-third of the prayers to the

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soul of the deceased, praying for his eternal rest in heaven. Furthermore, if possible, after receiving Holy Communion, the priests among them should offer prayers for the peace of the soul of the departed brother.

CHAPTER III. OF THE OFFICES, OF THE VISITATION, AND OF THE LAW ITSELF. § I. The offices, which are assigned to the members, should be presented to them at the meetings of the sodality. These offices are to be held for three years. § II. The Oblate should not refuse any office without a just cause, as the Visitor will inquire diligently to determine if the refusal is justified, and whether the laws are being properly observed. Therefore, the seat of the sodality should be visited frequently, and if circumstances require it, the Visitor should make more frequent visits, summoning the Prefects and all the members to be present. If the Visitor, in order to correct any fault, warns and commands an individual each year, and if that individual is found to be disobedient, he should humbly accept the correction, and should not refuse to fulfill the assigned task. § III. It is to be understood that the Visitors were originally chosen from among the Tertiary Order of St. Francis. § IV. The names of those who are designated to serve as Visitors, Custodes, or Guardians, should be read aloud. If lay members are disobedient and do not fulfill their duties, they should be warned for the first, second, and third time; if they persist in their disobedience, they should be ordered to leave the sodality.

[*Latin ed. p. 518*]

SECTION V. If anyone should have committed faults in these regulations, or should have acted in a manner contrary to them, they shall not be held accountable for their actions, except for those matters which are otherwise prescribed by divine law or by the laws of the Church.

SECTION VI. If any of the provisions of this law should, for some reason, prove to be a hindrance to someone in fulfilling them, it shall be permissible for the Superiors and the First Consultors to, with due prudence, exempt that person from that particular provision, or to modify those provisions. The Prefects of the Order and the Third Order, as well as the aforementioned Ordinary Visitors, shall have the power and authority to do so.

Index of Indulgences and Privileges.

CHAPTER I. OF PLENARY INDULGENCES.

Tertiary members, both men and women, who, after having confessed and received absolution through the rites of Christian penance, receive the Holy Eucharist, shall have the right to obtain a plenary indulgence on the following days and occasions:

I. On the day of their admission.

II. On the day when each member publicly professes their vows.

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III. On the day when they attend a sermon, provided that they have entered the church or public oratory for the sake of devotion, and have commended the Christian cause to God in the customary manner.

IV. On October 4th, the feast day of St. Francis of Assisi, the lawgiver; on December 12th, the feast day of the Blessed Virgin Mary, the lawgiver; on August 2nd, the feast of the Queen of Angels, in honor of the Basilica dedicated to her; and also on the days when the anniversaries of the saints are celebrated in the church where the sodality is established, provided that they have attended the church for the sake of devotion, and have commended the Christian cause to God in the customary manner.

V. Once each month, on the day of their choosing, provided that they attend a public church or oratory for the sake of devotion, and that they have earnestly beseeched the Supreme Pontiff.

VI. As often as, for the sake of a more perfect life, they withdraw for eight consecutive days to dedicate themselves to steadfast mental prayer.

VII. Also, to those who are dying, if they have implored the holy name of Jesus, either with voice, or, if they have lost the ability to speak, with their will.

These same members shall enjoy the same right if, after having confessed and received the Holy Eucharist with a contrite heart, they have expiated their sins.

[*Latin ed. p. 519*]

CONSTITUTION 519, VIII. Those who, having received the blessing in the name of the Supreme Pontiff, and who, according to the will of the aforementioned Pontiff, offer prayers to God, and who, by this very law of praying, receive that which they call Absolution, that is, the Blessing, shall enjoy, on the following days: I. On the Nativity of Our Lord Jesus Christ; II. On the Sunday of the Resurrection; III. On the solemn feast of Pentecost; IV. On the feast of the Most Holy Heart of Jesus; V. On the feast of the Immaculate Conception of the Blessed Virgin Mary; VI. On the nineteenth day of March, the feast of Joseph, her spouse; VII. On the seventeenth day of September, the feast of the impression of the Holy Stigmata of Saint Francis; VIII. On the twenty-fifth day of August, the feast of Saint Louis, King of France, their patron; IX. On the nineteenth day of November, the feast of Saint Elizabeth, patron of the Hungarian Third Order; X. Also, once a month, if any member has prayed five times for the safety of the Christian faith, they may enjoy, according to the will of the Pontiff, a single "Ave" and "Gloria Patri," and, with all due right, for the expiation of the faults they enjoy, and for those who perform their prayers in the City, and for those who visit the Portiunculum, the most holy places of Jerusalem, the Apostle's shrine in Compostella, they shall enjoy, for the cause of religion, in the same temples or chapels, on those very days, the fullest right, as

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citizens or guests enjoy in the City.

CHAPTER II. OF PARTIAL INDULGENCES.

I. To all members of the Third Order, of both sexes, if they have celebrated in the temple or chapel in which the sodality is established, and if they have prayed to God for the safety of the Christian faith on the day on which the Holy Stigmata were divinely imprinted upon Saint Francis, and also on the feast of Saint Louis, and on the feast of Saint Elizabeth of Portugal, Saint Elizabeth of Hungary, Saint Margaret of Cortona, and also on any other twelve days that each individual may choose, and which the Prefect of the Order approves, those prayers shall be equivalent to seven septennaries, and seven times forty days of penance.

II. As often as they have attended Divine Offices, or public sodality meetings; as often as they have received the poor into their homes; as often as they have composed or sought to compose disputes; as often as they have properly dedicated themselves to private prayer; as often as they have accompanied the Sacrament to Aosta, or, if they are unable to accompany it, have recited the Angelic Salutation and the Lord's Prayer once at the sound of the bell.

[*Latin ed. p. 520*]

520 CONSTITUTION: Those who have recited the prayer and the salutation five times for the benefit of the Christian cause, or for the repose of the souls of deceased members of the sodality; or who have carried the corpse of a deceased person; or who have brought back anyone who has strayed from their duty; or who have instructed others in the divine precepts and other matters necessary for salvation; or who have performed any other act of this kind, may, for each of these individual acts, be granted the remission of two-thirds of the days of penance. To the Tertiary members, it is permitted to satisfy, by prayer, all and each of the indulgences mentioned above, whether plenary or partial, and also to obtain the remission of the temporal punishment due to the souls of the deceased.

Chapter III. OF PRIVILEGES.

I. To priests belonging to the Order of the Tertiary, it is permitted to recite prayers for three days out of each week, provided that they have not obtained the right to recite prayers on another day.

II. Whoever recites prayers for the remission of the temporal punishment due to the souls of deceased members of the sodality, shall obtain the same benefit as if he had recited prayers for the soul of a deceased person.

And all of these things, as stated above, we wish to be firm, stable, and valid forever; notwithstanding any Constitutions, Apostolic Letters, statutes, customs, privileges, or other rules of Our own or of the Apostolic Chancery, or anything contrary to them. Therefore, no one is permitted to

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violate these Our Letters in any way or in any part. If anyone should dare to do such a thing, let him know that he will incur the wrath of Almighty God, and of the blessed Apostles Peter and Paul.

Given at Rome, near St. Peter's, in the year of the Incarnation of Our Lord one thousand eight hundred and eighty-three, on the third day before the Kalends of June, in the sixth year of Our Pontificate.

C. Card. Sacconi, Pro-Datary.

T. Card. Mertel.

Seen by: De Curia, De Aquila, and the Vice-Comites.

Registered in the Secret Archives of Briefs.

I. Cugnonius.

[*Latin ed. p. 521*]

521 FROM THE HOLY CONGREGATION OF THE COUNCIL OF CERINIOLEN. ON THE MATTER OF January 20, 1883. Formerly, there existed only one parish within the city of Ceriniolen, whose habitual care was entrusted to the Cathedral Chapter, while the actual administration was carried out by the Archpriest. However, in order that the care of souls might be administered in a more suitable manner, in the year 1832, through a division, two new parishes were established, under the titles of the Most Blessed Virgin Mary of Mount Carmel, and the Most Blessed Virgin Mary of Sorrows, to which the Cathedral Chapter reserved the habitual care, and the majority of the revenues, assigning to each Parish Priest an annual sum of 637.50. In recent years, due to the increase in the number of the faithful, each Parish Priest deemed it necessary to appoint two assistant priests, assigning to each an annual sum of 153. Furthermore, due to the imposition of a tax, commonly called "di ricchezza mobile," the Parish Priests' income has been diminished by 87.50, which sum the Chapter retains; and also another tax, commonly called "di manimorte." As a result of this, it has become impossible to adequately provide for the support of the assistant priests; therefore, on December 13, 1881, the most holy Prince was supplicated, and it was requested that the Chapter, to which the habitual care belongs, be compelled to pay the stipends of the assistant priests and the tax of "di ricchezza mobile." SUMMARY OF THE MATTER. A Synopsis of the Dispute. DEFENSE OF THE PARISH PRIESTS. Above all, the Parish Priests contend that the Chapter must pay the stipends of the four assistant priests. And indeed, the Parish Priests ought to have a sufficient income.

[*Latin ed. p. 522*]

522 CERINIOLEN. For the honest sustenance of life, it is beyond dispute that, after deducting 306 books, which each Parish Priest pays to his Curates, the remaining sum of 3,315 books is entirely inadequate for their support. Therefore, they are justly relieved of this very grave burden. Since

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the habitual care rests with the Chapter, it necessarily follows that this burden should fall upon them. Furthermore, in these two Parishes, the Chapter reserved for itself, as stated in the Bull of erection, the rights of association and other emoluments, which are called "stolae nigrae" (black gowns). Thus, the Parish Priests are left with only small emoluments derived from marriages, in addition to expenses for the cult. Therefore, since the Chapter desires to receive, from the habitual care, many emoluments that rightfully belong to the Parish Priests, it should not, deriving this burden from the same habitual care, attempt to avoid it. It is indeed fitting that those who derive benefit from the exercise of a certain right, should seek that the inconvenience be borne by another. As for how the Chapter can find another way to avoid these expenses, it can do so in the Bull of Pope St. Pius V, *Ad exequendam*, in which Vicars were commanded to have a suitable sum defined for them, and the local authorities were given this rule: that a sum not exceeding one hundred, nor less than fifty scudi should be assigned to them. However, if one examines more closely both the circumstances and the Bull itself, the entire foundation of the Chapter's argument vanishes. Indeed, the Parish Priests say, from what has already been said, it is quite clear that a suitable sum has been assigned to them, after deducting the Curates' salaries and expenses for the cult, and even if the tax on movable property is included, it does not exceed fifty scudi. But even if it is granted that their assigned sum reaches the legal limit, they maintain that the spirit of the Bull should be examined, rather than the words, for as the Apostle wrote in 2 Corinthians 3:6, "The letter kills, but the spirit gives life." Indeed, if the words of the Pope are carefully considered, it becomes clear that he established this sum in order to restrain the excesses of prelates who were assigning very little or nothing from the fruits of the churches to the rectors of the parishes.

[*Latin ed. p. 523*]

CERINIOLEN. 023 In this case, however, the opposite is entirely verified, since Canons draw from the offerings and distributions necessary for their comfortable sustenance, while Parish Priests are in poverty. Therefore, when the purpose of the law has ceased, it must be said that the very disposition of the law has also ceased. It must also be noted that the Pontiff intended, by his disposition, that those engaged in the care of souls should be provided for in a proper manner, with prudent moderation, and for their benefit. However, the provision assigned to them, which the Chaplains are supposed to consult, is insufficient for the proper sustenance of life due to the excessive increase in the price of food. Therefore, it must be concluded that either the Pontiff's disposition has ceased, or at least that it must be moderated, because the intention must not be thwarted by the words, but the words must serve the intention. L. Scire ff. 16. on Laws. Nor is it helpful for the Chapter to oppose the appointment of only two Chaplains to suffice

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for each Parish Priest. Indeed, each Parish encompasses approximately ten thousand faithful, as the Parish Priests themselves demonstrate through the testimony of the Syndics; therefore, it seems that not two, but even three Priests are barely sufficient to attend to the spiritual welfare of this multitude, as can be seen from the Bishop's own words. Given this, according to the discipline of the Council of Trent in Session XXI, chapter 4, De Ref., it is the right of Parish Priests to add as many assistants as are sufficient to administer the Sacraments and to perform divine worship: and if the Parish Priests do not do so, the Bishop must compel them. It is better to quote the words of Trent: "The Bishops, even as delegates of the Apostolic See, in all parochial or baptismal churches, in which the population is so numerous that one pastor cannot suffice to administer the ecclesiastical sacraments and to perform divine worship, must compel the pastors, or others to whom it pertains, to add to themselves as many priests as are sufficient to administer the sacraments and to celebrate divine worship." This is indeed clearly demonstrated in the Apostolic Constitutions of Innocent XIII and in the Supreme Constitution of Benedict XIII. This has truly been prudently provided for, so that those who ask for bread may not be turned away empty-handed.

[*Latin ed. p. 524*]

52i CERINIOI.EN: Regarding another matter, some Parishes contend that the burden of the tax, commonly called "ricchezza mobile," should also be borne by the Chapter. They argue: "The Parishes' provision was not established on a fixed sum, but was designated by the Chapter; therefore, the Parishes are obligated to either accept an increase or suffer a decrease in their income. However, the Chapter has promised to provide annually 637.50 florins for the Parishes' provision. Consequently, the Chapter itself should bear the burden of the tax and should not be able to demand anything from the Parishes." The Chapter, however, objects that, after deducting 87.50 florins from the provision for the aforementioned tax, the sum established by the Council of Trent remains intact. Now, indeed, due to the conditions of the times and the scarcity of goods, the sustenance of life has become more difficult. Therefore, ReifFenstuel, in Lib. III, Decr., tit. 37, no. 23, concerning the disposition of St. Pius V regarding the Parishes' provision, rightly observes: "It must be noted, and it seems entirely appropriate, that at the time this Bull was issued (St. Pius V), namely 1567, everything, at least in these parts, was of a much lower price; so that at this time, compared to that previous time, the necessities of life are scarcely acquired at double the price; consequently, where at that time fifty or one hundred florins were not sufficient for a decent livelihood, today two hundred florins are necessary; therefore, the passage of time must also be taken into account, according to that common saying, 'Times change, and laws change.'" Therefore, if, in the time of this author, a provision of

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one hundred florins was barely sufficient for the Parishes, considering our times, and reflecting on the fact that the clergy lack the emoluments of the black cassock, such a provision is clearly insufficient.

DEFENSE OF THE CHAPTER: The defender of the Ceriniolensis Chapter asserts that both burdens are borne by the Parishes: namely, the stipend of the Coadjutors in annual payments of 306 florins, and the tax on movable property in 87.50 florins. First of all, he makes a distinction between burdens that relate to the care of souls and the administration of the sacraments, and other burdens; hence,

[*Latin ed. p. 525*]

CERINIOLEN. 525, citing Pitoni, in *Disputationes Ecclesiasticæ*, 50, number 37, states: that the expenses of Coadjutors, which should primarily be considered among the burdens of the care of souls and the administration of the sacraments, pertain to the perpetual Vicar, who has actual care of the parish, and not to the Chapter, which has habitual care: for a suitable provision is properly given to the Vicar for these burdens. However, according to Pitoni, in the aforementioned passage, number 40, the Vicar is not to be held responsible for these expenses, except when he has been given a provision sufficient only for his sustenance. Nevertheless, the speaker adds, this is not the case with the Vicars of Ceriniolen: firstly, because the Chapter provides 150 ducats annually for each; secondly, because of uncertain sums from the *stola alba* (white vestments), which, according to the testimony of the pro-cancellarius of the episcopal curia, amount to 60 ducats each year, in addition to other things, which will be discussed later. Therefore, since the provision granted by the Chapter for the sustenance of the parish priest amounts to 100 ducats annually, or 425 *libellae*, and the parish priests of Ceriniolen, in particular, receive at least 210 ducats, that is, 892 *libellae*, it is clear that there remains a sum for expenses, and in the first place, for the Coadjutors, amounting to 305 *libellae*, in addition to their sustenance, which is 110 ducats annually, or, which is the same, 467 *libellae*. But it may be objected that one cannot calculate on eventual and uncertain profits, such as those from the *stola alba*: for Cardinal de Luca, in *Disputationes* 18 de Parodi, number 12, states: "Although it may seem to obstruct the reason for doubting, that there is no reason for including uncertain things in the provision, nevertheless there does not seem to be a considerable reason, since this conclusion must be understood of those emoluments, purely voluntary and uncertain, which depend solely on the devotion of the people, and which may be none at all: whereas, in parochial emoluments, which are paid on the occasion of sacraments, or burials, since the people cannot but die, be born, and be baptized, and contract marriages." As for the tax on movable property, which amounts to 87.50 *libellae*, in addition to 300

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ducats, which are paid exactly by the Chapter every two...

[*Latin ed. p. 526*]

526 CERI MOLEN. The parish priest is obligated to pay, the defender warned, since the Chapter must fulfill all and every obligation pertaining to the goods of the six suppressed Mansionaries, from which funds are drawn. Therefore, the remaining obligations, which, besides the expenses of the care, the aforementioned Pitonius, in the cited document, ecclesiastical number 50, paragraph 37, assigns to the Chapter, which has habitual care, the Chapter itself truly and completely supports, according to ecclesiastical laws. The question here is about a new and different tax on movable wealth, which, by its own force, pursues the one who possesses it, not the one who does not; therefore, after the debt is paid, it is not possible for the debtor to again be assigned the sum, if the government demands something else from him for his own person. To these legally established obligations of the parish priests, in the salary of the Coadjutors and in the tax on movable wealth, the Orator adds, that they should at least be exempted, because of the asserted lack of the proper provision, if the parish priests were condemned. For, according to the Constitution, *S. Pii V*, the provision must not be less than one hundred, nor less than fifty *scuta* annually, or 500 *libellae*, including all uncertain, emoluments and other revenues commonly received. The parish priests, in turn, receive annually 150 ducats from the Chapter for each, and emoluments from the white vestments, amounting, according to the testimony of the Pro-Chancellor of the Episcopal Curia, to 60 ducats more: in total, 210 ducats, or 892 *libellae*. From this, it is easily understood that the entire provision of one hundred ducats is not lacking to the parish priests, even if they were to fulfill the obligations about which we are speaking. Furthermore, in favor of the parish priests, there are pious legacies, in both churches, which are to be fulfilled; and after these are fulfilled, something remains in favor of the same parish priests. This provision is not diminished by the expenses of worship; which are entirely supported by the two confraternities, which have existed in those churches for sixty years. Moreover, if the provision were lacking, according to the hypothesis, the Chapter would not be held liable, the Defender concluded. For, it is no longer possible to proceed, nor can it proceed, according to the old rule, that the Chapter, having habitual care, must supplement [the provision].

[*Latin ed. p. 527*]

CERINIOLEN. 527 [units], provided that the parish possesses sufficient assets, and to the extent that those assets permit, as stated by Cardinal Be Luca in *Disputationes de Parochiis*, section 18, number 10 and 11. Since all ecclesiastical assets are under the control of the secular government, only twelve canonries remain in the cathedrals, along with six prebends: the first

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of these canonries in the Ceriniolen cathedral must provide 100 ducats; the second, 50 ducats, with expenses consuming almost the entire amount; the remainder consists of the common fund, distributed daily under its natural form, to which the beneficiaries of the choir are entitled. Therefore, the canons and prebendaries could not provide anything, even if they wished to do so, and in the specific case of a deficiency in the [funds], one would have to turn to the government, which holds the assets of the parishes. Furthermore, the law which attached the Church's patrimony to the treasury is obligated to supplement the deficiency in the [funds], according to the number of souls, and recourse is made daily to it as needed. Considering these and other matters, the following propositions were to be clarified: I. Are the parish priest or the chapter obligated to reimburse the stipends to assistant priests in a given case? II. Is the burden of the tax, commonly called the "tax on movable property," to be borne by the parish priest, or by the chapter, in a given case?

RESOLUTION. After deliberation, the Sacred Congregation decided on January 20, 1883, to respond as follows: To I: The chapter is not obligated. To II: Negatively to the first part, affirmatively to the second. FROM WHICH IT IS UNDERSTOOD: I. The burdens pertaining to the care of souls and the administration of the sacraments must be fulfilled by the parish priest who is currently in charge, if he has the legally required [funds].

[*Latin ed. p. 528*]

528 CERINIOLEN. II. Inter ea quae ad administrationem Sacramentorum et curam animarum pertinent, considerandum videtur, ut expensae coadjutorum solvantur (1). III. Concessio in materia libera a laxitate, vulgo "taxa mobilia," praestanda videtur, quia constituta est a Capitulo in virtute pecuniae certae atque determinatae (2).

(1) Confer. Vol. VIII, 594. Postulatum circa Parochiam. In hoc postulato, Episcopus interrogat, utrum parochum liceat coargere, ut sibi adiungat, ex propriis sumptibus, alium sacerdotem ad oboendum officia parochialia, quibus parochus et cappellanus eius deficiebant. Sacra Congregatio, post deliberationem die 24 Iulii 1875, respondit: In casu exposito, parochum licet coargere, et amplius.

(2) Recole Vol. XI, 447. Reintegratio vectigalium. Haec quaestio agitata est inter Capitulum Cortonen. et unum ex quatuor parochiis, quibus idem Capitulum congruam parochialem praestare spondebat, a quovis onere immunem. Sacra Congregatio resolvit vectigalia (inter quae taxa mobilia) tam persoluta quam persolvenda a capitulo redintegranda fuisse.

FULDEN. DE CONSUETUDINE ET FACULTATE ADSERVANDI SS. EUCHARISTIAM. Die 17 Februarii 1883. Per summaria precum. Episcopus Fuldensis, supplici oblato libello sub die 11 Decembris 1882, Summo Pontifici exposuit: « Consuetudinem inolevisse a pluribus saeculis conservandi SS. Sacramentum in Ecclesiis filialibus suae Dioecesis; quibus

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addictus est presbyter, qui diebus festis et fere quotidie in illis Ecclesiis missam celebrat. Ceterum SS. Sacramentum caute custoditur et lampas perpetuo accensa habetur, sed dictae consuetudinis origo documentis demonstrari nequit; attamen, cum dioecesim supradictam saepius a Nunciis Apostolicis clarissimis visitatam esse constet, indultum...

COMPENDIUM FACTI.

[*Latin ed. p. 529*]

FULDA. 529. This seems to be a certain Apostolic custom. Furthermore, in the aforementioned diocese, certain chapels have been erected, especially in areas frequented by heretics, and others, as one hopes, will be erected in the future, in which a priest, from the beginning, says Mass twice a month and provides for the faithful collections, especially for the sick, who are gravely ill in the vicinity. The faithful in these places greatly desire to venerate the Holy Sacrament, even on those days when Mass is not offered. Without a doubt, the Sacrament can be carefully guarded by a sacristan, a caretaker, or other faithful men, and a lamp can be kept perpetually lit. The Bishop, kneeling humbly before the Holy Virgin, requests that she kindly approve of the aforementioned custom of preserving the Holy Sacrament in filial churches, as described above, and that she grant him the faculty, with due observance of the necessary precautions, to allow the Holy Sacrament to be reserved in the churches or chapels mentioned above. "Synopsis Disputationum." It is certain that the Holy Sacrament can be reserved even in non-parochial churches by Apostolic Indult. Although, in no case, is any document presented to prove this, it must nevertheless be presumed from the existing custom, as testified by the Bishop, which, for many centuries, has been a customary practice – which does not arise from a false title. Indeed, it has been established in law that such a custom has the force of a privilege and provides a better title in the eyes of the world; Card. De Luca, *De Beneficiis*, Disputation 32, nos. 2 and 6; the Holy Roman Rota in several decisions, but especially in *Praenestina Mutae*, March 23, 1819, paragraph 3, before Mark. But in order to properly examine the matter concerning the custom of preserving the Eucharist, it is fitting to refer to the words of Benedict XIV in the Constitution *Quamvis iusto die*, April 30, 1749, § 24: "The Sacrament of the Eucharist cannot be reserved in churches which are not parochial without Apostolic Indult." *In Sacra Tomus XV, fase. C, L, XXIX, 34*.

[*Latin ed. p. 530*]

FULDA. "Due to a custom, either ancient or unforgettable, which encourages such a dispensation." And it has already been approved by the Sacred Congregation of the Council, so that the Sacrament of the Holy Eucharist may be reserved in churches, even those that are not parochial, if it has

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been preserved in them according to this ancient custom, as is stated in the documents from Naples of April 21, 1709. Furthermore, this custom is also supported by the tacit approval of the Apostolic Nuncios, who have frequently visited the Diocese of Fulda. Therefore, all reasons suggest that the aforementioned custom of preserving the Eucharist in filial churches should be upheld. Regarding the second part of the petition, it is noted that Cardinal Peter wrote in his Commentary on the Constitutions of Urban IV, number 37: "In granting such permissions, the Sacred Congregation should proceed with caution, not only because of the fear of easy irreverence, but also because it does not befit the Sacrament to be reserved in a less solemn place, although, if there is a gathering of the people, and especially if it is distant from the parochial church and other necessities for its maintenance are present, it is often permissible." All of these factors are present in this case. Indeed, there is a gathering of the faithful who, according to the testimony of the Bishop, earnestly desire to venerate the Sacrament of the Eucharist even on those days when the Mass is not offered. There is also a need and a benefit. For, since the Holy Sacrament is reserved primarily for the use of the sick, unless this permission is granted, the faithful who live in those places, when they are in danger of death, either must depart this life without the last support of religion, or they must be transferred with great inconvenience to the parish, which is far away. And it is clear that this measure should be taken, as evidenced by several decisions of the Sacred Congregation, namely those from Naples of June 31, 1706, and from Lisbon of September 6, 1707. Finally, the Bishop diligently provides for all that is required for decorum, ornamentation, and safekeeping. THE REQUEST SEEMS TO BE DENIED. However, it is primarily to be considered that the most important reason...

[*Latin ed. p. 531*]

FULDA. §31 The custom of keeping the Eucharist in a church is maintained, in that it is brought to the sick, so that they may not die without Communion; Canon Presbyter, dist. 2 de consecrat. Therefore, since this care pertains to the parish priest, the Blessed Eucharist can only be kept in parish churches or in those that serve as parishes, among which certainly are not included chapels, of which mention is made in the aforementioned document. Moreover, with regard to these chapels, the danger of irreverence cannot be entirely removed, against which the Popes have taken the greatest care when granting such permissions; Cap. 1 tit. 44 lib. 3 Decret. Encyclical Letters of the Sacred Congregation of Bishops and Regulars, dated February 7, 1751. For we all know how the heretics have always detested the Holy Sacrament, especially in those places where chapels are erected, for which an Apostolic Indult is requested. Finally, it seems to follow from the Decree of the Sacred Congregation of Rites in Fermo, dated March 16, 1833, that Mass should be celebrated every day in the church where the

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Eucharist is kept, where it was decreed that the cleric assigned to the rural church, where the Eucharist is kept, "must reside," and "celebrate Mass daily, either personally or through another priest." This, however, is not observed, not only in the chapels mentioned above, where Mass is celebrated only twice a month, but also not in the filial churches, as the Bishop himself admits. With these brief observations, the question was put to the Eminent Fathers as to what should be answered to the request of the Bishop of Fulda. RESOLUTION. The Sacred Congregation, having considered the matter, on February 17, 1883, decided to respond: For the sake of piety, and in accordance with the request, it is granted that in the chapels, both those already erected and those to be erected, Mass be celebrated at least once a week, provided that the necessary arrangements are made with the Most Reverend [Bishop]. FROM WHICH IT MAY BE GATHERED THAT: The Holy Mother Church is accustomed to grant that the Most Holy Sacrament be kept even in a less solemn place.

[*Latin ed. p. 532*]

532 FULDEN: Out of fear of irreverence, the necessity and utility of this [practice] are evident whenever there is a gathering of the people. II. Three things must be noted by the local Ordinary: that the faithful of his Diocese desire to venerate the Most Holy Sacrament, and that through this facility, the eternal salvation of the infirm can be greatly promoted; for either they would have to move without this comfort of religion, or they would have to be brought to it with great inconvenience from their parish, which is often far away.

CASTRIMARIS: Regarding the nomination [of a canon], on February 17th and May 5th, 1883. Anthony Bolognese, through public records, duly completed, on December 26th, 1701, founded a canonry in the Cathedral Church of Castrimaris, establishing the right of patronage with the consent of the Chapter, under this law: that someone should be chosen to hold this office, either in Sacred Theology or in civil law. However, if in future presentations, neither of these qualifications is found, one of the hebdomadarii [chaplain] could be presented by the Chapter. The Archdeacon informed the Apostolic See that this canonry is now vacant, and that there are two priests in that city, both very young, who have received degrees; while there is also one of the hebdomadarii who has already served on his appointed days, and who has commendably served in the choir for thirty years or more. Therefore, the Archdeacon, also in the name of the Chapter, requested that, for this one occasion only, one of the aforementioned hebdomadarii might be presented to fill the vacancy. To these requests, the Bishop added his own, and also testified to the truth and utility of the matter.

SUMMARY OF THE MATTER.

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[*Latin ed. p. 533*]

CASTRIMARIS 533. SYNOPTIC DISCUSSION. DEFENSE OF THE CHAPTER. Firstly, since it is beyond doubt that the civil government has reduced the number of canons to twelve, and since the aforementioned canonry has been subject to the law of suppression, it appears, as if of its own accord, that the Chapter is no longer bound by the laws of its foundation in this case. For, as is well established among the Doctors, when revenues cease, the order of the founder's endowment must also cease, as stated in DD. arg. §. f nal. Inst. de Usufructué, cap. Cum accessissent 8 et cap. Eco, part 12, de Constitutionibus. Thus, especially Felinus in the cited chapter, Cum accessissent 8 de Constit. Reiffenstuel, lib. HI, Tit. V, de Praeb, et Dignit., no. 114, Azorius, p. 2, lib. 6, cap. 24, q. 6. And it seems, indeed, to be rightly so established, since it has been demonstrated that the endowment of the benefice constitutes, as it were, the foundation of the founder's will; and therefore, its vicissitudes must necessarily follow, in accordance with the well-known rule of law, 42 in 6°, that the accessory must conform to the nature of the principal. However, the Chapter asserts, without any doubt, that this prejudice arising from the loss of the endowment should be borne only by the founder, saving the right of patronage of the Chapter. For it states that the founder has retained direct ownership of the endowment, and therefore, only he should experience this loss. For, as §. 3 of the Institutes de Locat. et Cond. states, and as L. 1 C. de Iure Emphyt* teaches, "the risk belongs to him whose is the lot." Furthermore, it is added that, with the best of right, after the law of suppression, the Chapter could divide the sum of money received from the civil government among only twelve canons; and, by a most unusual example, it called seven other canons and six hebdomadaries to participate in this, as testified by the Bishop, especially for the love and decorum of the sacred cult. Therefore, if the Chapter, for the sake of the decorum of the divine cult, gives from its own resources, so that the number of canons and hebdomadaries remains complete, and in this case grants an endowment, it is clear that it can be validly held that the Chapter is not bound by the laws of its foundation.

[*Latin ed. p. 534*]

534 Regarding the establishment of a new canonry. Indeed, it could claim a new title of patronage, if it wished, since the endowment, by the Council of Trent, Session 15, chapter 12, and Session 21, chapter 7, concerning reforms, recognizes the right to acquire patronage for a sufficient cause. Furthermore, the Chapter observes that the Bolognese canonry retains its own distinct entity, and does not properly participate in the nature of a mass; the characteristic of which is that individual parts are mixed together so as to remain indistinct. Indeed, this endowment, when granted, was in the common fund, and was maintained in it in much

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the same way as a certain sum is maintained in the common chest by the custodian of deposits. For a thousand ducats were assigned to the Chapter by the patron; not so that it might dispose of this sum at its pleasure, but so that, while always remaining in the same state, only the revenue might be received by the Chapter. Therefore, considering the matter, it is always evident that the nomination of one of the hebdomadaries to the canonry, by law and with due merit, is a valid action for the Chapter in this case.

DEFENSE OF BENEFICED PRIESTS. Another point, however, must be considered, which is commonly held in law to be that whatever the secular power disposes of concerning goods belonging to the Church, it must be declared void, even if such a disposition were to be for the benefit of the Church, chapter 10 of Constitutions, chapter 12 of the Code of Canon Law, not alien, chapter 5 of Arbitrations, Fagnan, in chapter. These are found in the writings on Church law, numbers 20 and 31. The reason for this nullity lies in the fact that the laity lack jurisdiction either over ecclesiastical persons or over the goods of the Church; Fagnan, loc. cit., Piton, in controversies on patronage, alleges 57, n. 70, and the Sacred Roman Rota, before Cavaler, decision 494, n. 2. Therefore, assuming that the suppression in this case was carried out by the civil power, while the Church, to the extent of its power, protested, it is clear that such a suppression would have no validity, and therefore the benefices, such as the canonry with its title of patronage, would remain in the same state as before. For what is null is incapable of producing any effect, as stated in Law 4, §, concerning the foundation of judicial matters, and in chapter 8 of the Code of Canon Law, concerning patronage.

[*Latin ed. p. 535*]

CASTRIMARIS Ö35. Therefore, the Bishop writes, concerning the matter, based on the opinion of the priests: the deprivation of revenues, in order to provide for seven individuals, can, in effect, be likened to the suppression of seven benefices; but this [deprivation] must be considered as a certain diminution of the entire mass [of revenue]. Thus, each canon can obtain a smaller share in the division of the fruits. And this is also confirmed by the fact that that Chapter has no distinction of benefices, except for the canonry of patronage, but possesses only a single common fund; and because it has already obtained a significant reduction of masses from the Apostolic See. Given these circumstances, it is not clear how it can now be sustained, especially since the Chapter is not bound by the founding laws, which it is taught must be observed strictly, according to L. No one is permitted, according to Cod. de Episc., et Cler., Clement., Quia contingit, cap. 2 de Relig., dom., cap. We, from the decree of the Council of Trent, Session 25, chapter 5, de Reform. Indeed, the very founder himself wished these laws to be so firm, that he decreed that any act contrary to them should be declared void, even with a prior dispensation from the Apostolic

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See, with a derogatory clause. Furthermore, those arguments presented to support the extinction of this canonry are clearly refuted, since, from what has been stated above, it is clear not only the nullity of the suppression, but also the preservation of the endowment. Since the diminution of revenues, for which provision has already been made through the reduction of masses, affects the common fund. Given these circumstances, it seems justifiable to conclude that the priestly order must be maintained in its full strength. After these deliberations, the question was raised: what response should be given to the following question: Should one of the hebdomad [group of seven] from Arnari be appointed to the vacant canonry for this occasion, or rather, should a member of the order [of the Sorores Laureatae]?

[*Latin ed. p. 536*]

536. THE RESOLUTION OF CASTRIMARIS. The Sacred Congregation, after deliberation, on May 5, 1883, decided to respond: Negatively to the first part, affirmatively to the second. FROM WHICH IT IS UNDERSTOOD: I. That the Sacred Congregation did not consider the canonical establishment of Bologna to have been extinguished, neither in law nor in fact; but rather to have undergone a suppression, carried out according to civil law, as a diminution of the common patrimony; so that the Chapter is still bound by the laws of the foundation with regard to the election of beneficedaries. (1) (1) Compare the question of patronage referred to in Volume XV, page 344. Doubts regarding the interpretation of the Apostolic Constitution. MOST HOLY FATHER, the Bishop of N., humbly prostrates himself before Your Holiness, and explains that some doubts have arisen in this Diocese concerning the interpretation of that clear Constitution, which begins with the words "Apostolicae Sedis moderationi," issued on October 1, 1868, and which appear to require an Apostolic solution. Firstly: "Indeed, by the aforementioned Constitution, it is declared that the sentences of excommunication, reserved to bishops or ordinaries, apply to clerics, whether in the sacred orders or regular, or monks, who, after taking the solemn vow of chastity, presume to contract marriage." The question is whether this censure also extends to those clerics who intend to contract what is called a "civil" marriage in places where the Decree, chapter I, "De Reformatione Matrimonii," promulgated by the Council of Trent (Session XXIV, on marriage), is in force. However, this opinion is rejected by others.

[*Latin ed. p. 537*]

DOUBTS: Secondly, concerning the Constitution regarding Excommunication, numbered 5, 3, 7, to which opinion should one adhere? Some maintain that it applies only to those who print books without the approval of the Ordinary, or who print things that are not sacred, but others assert

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that it includes any books whatsoever that deal with matters pertaining to religion, i.e., those that treat of religious subjects, along with their annotations or commentaries. Therefore, the question arises: to which opinion should one adhere? Thirdly, numerous doubts have arisen concerning the execution of the aforementioned Constitution, due to the general, and indeed most complete, clause of derogation included at the end of it, namely: "notwithstanding the foregoing, and all other ordinances, constitutions, privileges, even those worthy of special and individual mention, and also any customs, whatever they may be, even those of long standing, and all other contrary things whatsoever." The undersigned Bishop, omitting the considerable difficulties that arise in the execution of the "Apostolic See's" Constitution, primarily because the rights of the Church are not fully recognized, and because various laws and customs are contrary to this Constitution, raises the following principal doubts concerning the meaning and reason of its clauses.

1.) Concerning the force of the aforementioned Constitution: "Nuns who leave the enclosure outside of the cases and forms prescribed by Pope Pius V in the Constitution 'Decori' are subject to excommunication." However, in Rome, and in many other places, this ancient custom of the Diocese is entirely different, and even in Rome, it is granted to them to leave for serious reasons, recognized and approved by the Bishop, according to the Council of Trent, and without any regard for the Constitution of Pius V. Therefore, the question arises: should this particular and ancient custom be considered abrogated by the aforementioned new Constitution, or can it continue?

2.)) In the same Constitution, the Roman Pontiff reserves excommunication for those who "dare or violate the immunity of ecclesiastical asylum with temerity." However, in these regions, the law of ecclesiastical asylum has, according to all its reason, fallen into disuse for a long time, so that scarcely anyone, unless seeking its patronage in a particular case, intends to use it. Nevertheless, the question arises: if the contrary custom has been abrogated, should the law of ecclesiastical asylum, at least in substance, be maintained even in these regions?

[*Latin ed. p. 538*]

538. QUESTION 3°. They declare that those who alienate and those who receive ecclesiastical goods are subject to excommunication, without the approval of the Apostolic See, according to the form of the Extravagant "Ambitiosae" – concerning ecclesiastical goods that are not to be alienated. Furthermore, there are certain unfortunate cases in which ecclesiastical goods have been afflicted from the beginning of this century, or other customs have arisen, or are alleged, which are contrary to sacred law, and which sometimes seem to be supported by very ancient privileges. Concerning these matters, the following questions may be raised: (A) Whether

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the law of the Apostolic Approval, by the aforementioned Constitution, which was enacted to limit the censures of sentences, applies primarily as if it were newly promulgated, so that it binds and would bind all generally by its force, even if the Constitution "Ambitiosae" (which is otherwise valid and firm) or any other similar law had not preceded it? And if so, (B) Whether the derogatory clause in the new Constitution should be considered to revoke ancient privileges rightfully obtained from the Apostolic See itself, namely, the privilege of alienating ecclesiastical goods without the approval of the Apostolic See. (C) Whether this derogation should also extend to particular customs contrary to the law of Apostolic Approval, even if they are long-standing? (D) Whether the law establishing a certain pious foundation or ecclesiastical institute, to the extent that it allows the alienation of bequeathed goods with the Apostolic Approval together with the consent of the Bishop or Ordinary, or with such consent and Apostolic Approval (as Moncelli, in Nos., deduced); whether this law of the foundation can stand, at least with respect to institutes under royal patronage, which, by their own charter, from Chapter immediately preceding – "Concerning the Protection of Religious" (Council of Trent, Session XXII, Chapter VIII) – have been endowed with a royal title, with legal freedom or a faculty granted by the founding monarchs to do whatever they deem necessary with their goods for their own needs and for the needs of the entire institute, by common decree? These are the principal questions which, as Your Holiness will graciously deign to resolve, are humbly presented. And God, etc. Thursday, December 22, 1880. From Your Most Devoted, etc.

Regarding the first part of the petition: Concerning Clerics in sacred orders, or Regular or Monastic religious who, after having taken the solemn vow of chastity, presume to contract marriage...

[*Latin ed. p. 539*]

A QUESTION is posed, thus: Whether, in places where the law of Trent concerning clandestine religious orders is in force, a civil action can incur excommunication *latae sententiae* reserved to the Bishop or Ordinary.

Regarding the second part: The censure reserved to those who, dealing with sacred matters, print books without ordinary approval, is to be restricted to books of sacred Scripture, and not extended to their annotations and commentaries, much less to any books whatsoever concerning sacred matters in general, that is, those pertaining to religion.

Regarding the second part of the question: Regarding the egress of nuns, according to the decree of Saint Pius V.

First: Negatively, regarding the second: The enclosure is to be maintained, contrary to custom, notwithstanding.

Second: Affirmative, and a particular instruction is given. See Instruction from the Sacred Congregation of Religious, February 1, 1871, concerning

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the text in V, Ad primum, Ad secundum, concerning the question under letter (A). Affirmative, concerning the question under letter (B), to the extent that the privileges in question are general and personal; Affirmative; to the extent that they are special, Negative.

Third question (C): Affirmative.

Regarding the fourth question under letter (D): Nothing has been changed by the recent Constitution concerning the foundations of pious places and ecclesiastical institutions, and therefore, judgment is to be rendered as indicated above, according to the promulgation of this Constitution.

[*Latin ed. p. 540*]

540. PONTIFICAL DOCUMENTS: A BRIEF COMMENTARY RELATING TO THE VOLUME, PAGE 375. This instruction was issued in the year 1832 by the Sacred Congregation for Immunity, concerning the exclusion of laymen and married clerics from exercising any office of jurisdiction in criminal cases involving clerics.

It is a certain principle of law, and one constantly observed in practice, that neither laymen, nor even married clerics, can judge in criminal cases involving clerics, or exercise any act of jurisdiction against them, even if delegated by a competent judge: because the delegation must fall upon a subject capable of ecclesiastical jurisdiction; except in the case of express authorization from the Apostolic See, laymen and married clerics are equally incapable.

In conformity with the foregoing principles, this Sacred Congregation of Immunity, to which the protection of the rights of the Church and of ecclesiastical persons is entrusted, has not only repeatedly instructed Ordinaries not to avail themselves of the ministry of laymen in the preparation of proceedings against clerics, but has also decreed that it is not permissible.

(1) Regarding what we have adduced in Article XI of the Appendix, page 385 of this volume, concerning Actuaries and Notaries, it is appropriate to mention that the Letters issued by the Sacred Congregation for Immunity on October 3, 1832, state that no act of jurisdiction can be exercised by laymen or married clerics in criminal cases involving clerics; nor, even if delegated to them by Bishops, is it permissible for these actuaries or notaries, unless they are clerics themselves, to examine witnesses.

[*Latin ed. p. 541*]

544. For the reason that the examinations of witnesses, concerning a lay matter, delegated a judge to conduct the clerical process, even up to the point of proving the sentence, exclusively; not only did it declare null any process initiated by a married cleric, even if delegated by an Apostolic Delegate, against ecclesiastical persons, but also, in full assemblies on August 23, 1775, and March 17, 1778, it issued a decree regarding the nullity of

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processes against two ecclesiastics in the dioceses of Setina and Praenestina, solely because the examinations of witnesses, except for those conducted by the episcopal notaries, had been carried out by notaries of the bishopric, who, although delegated by the ecclesiastical judge, were not celibate clerics, but married men. Then, on September 22, 1781, through an explicit Pontifical decree, it sent circular letters to all Ordinaries, in which it condemned any custom whatsoever, even if ancient, and recalled to full and diligent observance of the canonical dispositions in those dioceses that had departed from them; nor did it fail to address, through the exercise of Apostolic authority, the defects of processes, up to that point completed, against ecclesiastics, contrary to the form prescribed by the sacred canons. Despite the principles and practices explained thus far, it came to the knowledge of the Sacred Congregation for the Immunities that certain episcopal courts were again, and in some cases, a bishop was delegating a lay judge to process a cleric, even up to the sentence exclusively; not only did it declare null any process instituted against ecclesiastical persons by a married cleric, even though delegated by an Apostolic Delegate; but also, in two full assemblies, the first on August 23, 1775, and the second on March 17, 1778, it decreed in favor of the nullity of processes against two ecclesiastics in the dioceses of Sezze and Praenestina, solely because the special judge delegated by the ecclesiastical mandate was not a celibate cleric, but a married man. And subsequently, on September 22, 1781, through an explicit Pontifical decree, it sent a circular letter to all Ordinaries, in which, condemning every contrary custom, even if very ancient, it called them back to the exact observance of canonical dispositions in those dioceses that had departed from them; and it did not fail to provide, through the exercise of Apostolic authority, for the defects of the processes formed by them up to that point against ecclesiastics, contrary to the form prescribed by the sacred canons. Despite the principles and practices indicated thus far, it has come to the knowledge of the Sacred Congregation...

[*Latin ed. p. 542*]

542 DOCUMENTS: Regarding the immunity that certain episcopal curiae have recently, and perhaps more extensively, deviated from. According to Article 3 of the Appendix to the Organic Regulations published on the 5th of last November, in the year 1831, all ecclesiastical criminal tribunals must consist of the Ordinary and four other judges. Now, in more dioceses, either due to a mistaken understanding of the aforementioned provision by the Supreme Authority, or due to a lack of qualified individuals within the clergy, or for other similar circumstances, certain laypersons or married clerics have been called to participate in the aforementioned tribunals, and these individuals are entrusted with the judgment, both in other criminal cases and in those pertaining to clerics. Consequently, doubt has arisen regarding the nullity of the sentences pronounced by these tri-

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bunals against clerics, and some have not hesitated to appeal to this Sacred Congregation, requesting that the condemnation passed against them be declared null, on the grounds of lack of jurisdiction and violation of personal immunity. Nor should it be overlooked that this practice, which is no less irregular, has previously been introduced in other episcopal curiae, where the office of judge in proceedings, even in cases involving clerics, is commonly exercised by a layperson or a married cleric. In this situation, this Sacred Congregation, in order to...

[*Latin ed. p. 543*]

Concerning Clerics: It is customary for a cleric, whether a simple cleric or one who is married, to practice [his duties] from a certain point. This matter has been brought to the attention of the Most Holy Congregation, which, both for the purpose of establishing [proper procedure] and for the sake of removing any doubt from the judgments rendered by the episcopal criminal tribunals, has considered it its most fundamental duty to consult the Holiness of Our Lord, so that He might receive His Apostolic Oracle and publish appropriate measures, such as recalling adherence to the canons, and to prevent further appeals, which could easily arise from other ecclesiastical persons similarly investigated and judged by the episcopal criminal tribunals. Therefore, having made a report of all these matters to the Most Blessed Father, and with His express and sovereign authorization, this letter is directed to Your Eminence, and it has two objects. The first is to warn that, although in Your Court, over a long and unforgettable period, a practice has developed that is not in accordance with those procedures established by the Holy Canons through the resolutions of this Holy Congregation, You must, in the future, demand that in any proceedings against ecclesiastical persons, both in the examination of the case and in the examination of witnesses, [certain conditions] be present and observed.

[*Latin ed. p. 544*]

544. The documents established in the repeated resolutions of this Holy Congregation require that, when conducting proceedings against ecclesiastical persons, both concerning the acts constituting the offense and the examination of witnesses, the assistance and intervention of an ecclesiastical judge, or another person delegated for that purpose, must be provided, provided that the person is a celibate cleric. Secondly, it must be made known that, since the article in question in the appendix to the 3rd Organic Regulation does not, either in spirit or in expression, derogate in any way from the canonical provisions, the judges who are currently required to compose, together with the Ordinary, all ecclesiastical criminal tribunals must be celibate clerics. Furthermore, it must be noted that the condition of some cities and dioceses, in which it is difficult to have four celibate clerics suitable to serve as an ecclesiastical judge or another person designated

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for that purpose, provided that the person is a celibate cleric, presents an obstacle. Another matter to be brought to your attention is that, since neither the spirit nor the letter of article 3 of the appendix to the organic regulation derogates in any way from the canonical provisions, the judges who, together with the Ordinary, are required to conduct all ecclesiastical tribunals must be celibate clerics. Nor does the implementation of this rule preclude the condition of certain cities and dioceses, in which it is difficult to have four celibate clerics suitable for the prudent office of a judge; for the Holy See has already addressed the needs of these places through the Secretariat of State, which, in circular letters of April 14th of last year (1), reduced the number from four to only two of those who, together with the Ordinary, conduct the tribunal (1). The circular letters to which reference is made here state that it has been presented to the Holiness of Our Lord by certain episcopal curias that it is very difficult, and in some dioceses impossible, to require the number of four persons who, together with the Ordinary, conduct the ecclesiastical tribunals in criminal cases, according to the provisions of article 5 of the appendix to the organic regulation of last November 4th. Hence, considering these circumstances, the Holy See has granted Ordinaries the faculty to reduce the number of judges to two, who, together with themselves, conduct the respective tribunals in criminal cases, when it is very difficult and mixed cases, and it is not possible to choose four persons. Rome, April 14, 1842. — T. CARD. BERNETTI. —. This has been presented for simple historical information; for in the instruction of the Holy Congregation of Bishops and Regular Canons concerning the statute for conducting and resolving cases in the present time, it is sufficient for our appendix, and it is also the only one.

[*Latin ed. p. 545*]

Whether the jealous Office of the Judge is to be exercised, since there are places where such an office is needed, His Holiness has already provided for this necessity through the Episcopal Criminal Tribunal, which must compose itself of individuals possessing the necessary skills. If in any Diocese the number of persons capable of exercising such a function is so limited that, instead of four, only two can be found, His Holiness desires that Bishops form the Episcopal Criminal Tribunal. If there is a Diocese in which the Clergy is lacking in persons capable of judging, who are endowed with the necessary knowledge and other qualities, and who, after being heard by the Pontifical authorities, have been provided with the necessary provisions, then His Holiness desires that the Bishop, in his own discretion and with due regard for the sacred Canons and the personal ecclesiastical immunity, extend the aforementioned considerations to all ecclesiastical tribunals, both those composed entirely of laymen and those composed of married clerics. Therefore, with regard to the aforementioned proceedings and sentences, His Holiness desires that, concerning proceed-

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ings against ecclesiastical persons, whether lay or married clerics, and concerning sentences pronounced by Episcopal tribunals, which, having been examined, are found to be contrary to the canonical form, His Holiness will not fail to consider them, so that they may be rendered benign and less harmful to the sacred Canons and to the personal ecclesiastical immunity. In this matter, the Pontifical Congregation will give instructions, to which recourse should be made in particular circumstances. It is not permissible for two subjects to be brought before the highest Imperial Tribunal without having first recourse to the aforementioned Congregation. His Apostolic Holiness has not neglected to heed the oracle, and will give instructions to the aforementioned Congregation, to which recourse should be made in particular circumstances.

[*Latin ed. p. 546*]

546. Hitherto, no document has been presented, nor has it been validated or confirmed regarding this matter, nor has an appeal been made to this court; therefore, by the will of HIS HOLINESS, the Apostolic Authority, it is entirely and universally decreed that, in order that any and all may have access to the highest Tribunal, this matter shall proceed as follows: On the first day of the Tribunal of Immunity, HIS HOLINESS desires that, with all due process, the consciences of all be healed and validated, as far as it pertains to the Judges who are examining the process, or to those who have not yet presented a recourse to the highest Tribunal. Finally, in order to quiet the consciences of the Judges, so that no further inquiry may be necessary, and that the ecclesiastical authorities may be free from any doubt, it is declared that Clerics, whether celibate or not, who have scruples, whether concerning the judgment being rendered, or concerning those who may doubt, or concerning any scruples that may arise in their consciences, whether concerning internal or external matters, in the case of doubt, or against any potential thought that may arise in them, are granted by the HOLY FATHER a total absolution from any potential thoughts from which they may secretly sin. This absolution is granted so that they may be absolved from any and all canonical penalties and censures. The confessors are to absolve them in their own confessionals. To Your Lordship, it is signified that you have received the present letter, and may God prosper your government. From Your Lordship, Rome, this day, 3rd of October, 1832. Given, 1832. Rome, on the 3rd of October.

[*Latin ed. p. 547*]

DOCUMENT 547: A circular letter published by the Most Holy Congregation of Bishops and Regulars on the first of August, 1851. (1)

Most Reverend and Most Reverend Fathers,

Most Holy Father, as Brother, on the 30th of October, 1800, in the title "Concerning the jurisdictions of tribunals and judges of criminal matters,

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the form and order of judgments, etc.," in § 24, He prescribed: "Let the abridgements of formulas be observed in the future, both in Rome and in the tribunals of the entire Ecclesiastical State, which are already in use in the government of Rome."

These formulas, and especially those concerning the legitimization of processes, which is absolutely necessary in the documents compiled by the ecclesiastical curias, according to the ancient procedure to be observed, as prescribed by the decree of the Most Holy Congregation of Bishops and Regulars of December 18, 1835, for criminal cases, are unknown to some of the notaries of these curias, as this Most Holy Congregation has had to observe in several cases.

Pius VII, in the Constitution *Post Judicate in Prima Ulme*, dated the 30th of October, 1800, in the title "Concerning the jurisdictions of tribunals and judges of criminal matters, the form and order of judgments, etc.," in § 24, He prescribed: "Let the abridgements of formulas be observed in the future, both in Rome and in the tribunals of the entire Ecclesiastical State, which are already in use in the government of Rome."

These formulas, and especially those concerning the legitimization of processes, which is absolutely necessary in the documents compiled by the ecclesiastical curias, according to the ancient procedure to be observed, are unknown to some of the notaries of these curias, as this Most Holy Congregation has had to observe in several cases.

(1) The injunctions of this circular letter, except for the modifications made by the instruction of June 11, 1880, are explained in detail: especially those contained in §§ XL and following. See volume XIII, page 335 and following, and our Appendix V, page 396 of this volume.

(2) We have mentioned this with note (1), as we have already indicated in volume XIII, page 333.

[*Latin ed. p. 548*]

548. DOCUMENTS: Petitions are submitted by the episcopal tribunals, concerning causes in the first instance; furthermore, some have dared to discuss causes in Episcopal hearings, that is, formally, in sessions, as formal proceedings are conducted by lay tribunals in pending cases. Therefore, it is deemed useful to newly print the aforementioned forms, and to send them to the Ordinaries, each with a copy for their chancery, so that any tribunal which permits such hearings in causes, and which is more concerned with the system and style of lay tribunals than with the usage and custom of ecclesiastical tribunals, may be duly informed. Thus, it has been ordered that the forms be again printed and sent to the Ordinaries, with a copy for each. To this end, copies are being sent to Your Eminence, N....

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It cannot escape this Holy Congregation that certain Ordinaries, in

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the composition of their criminal tribunals, with regard to the number of judges with a decisive vote, have not observed the provisions of the Appendix to the organic regulations and the criminal procedure issued by His Holiness Gregory XVI, through the Secretariat of State on November 5, 1831, together with the subsequent declaration in the circular letter of the same Secretariat of State of April 14, 1832. Since this law continues to be in full force, and its non-observance provides grounds for defenders to claim the nullity of the subsequent declaration in the aforementioned circular letter of the Secretariat of State of April 14, 1832, concerning causes in the first instance, when the same cause is proposed on appeal; therefore, it is necessary to inform the aforementioned defenders of the validity of the sentence in the first instance.

[*Latin ed. p. 549*]

The following document serves as a necessary reminder for the defense of the aforementioned provisions, and it recalls pontifical instructions regarding the claiming of rights, proceeding to the defense, and adhering to the instructions given to the ecclesiastical court, to which the gift of copies of the aforementioned provisions is made to Your Eminence. So that those who are burdened by the obligations incumbent upon instigators or those adhering to the Fiscal Court may not ignore them, and believing themselves aggrieved, they may appeal to the Holy See or the appropriate court. In order to recall the pontifical instructions concerning the case of ecclesiastical immunity, it is necessary to bring to their attention the general ordinance of February 22nd, so that the appeal to this Congregation, when brought before the court of first instance, may be presented with the aforementioned provisions, and so that those who are burdened by the obligations may, in the future, be aware of the cases in which these provisions are applicable. For this reason, a copy is proposed to be printed and distributed to the Curia, and to be included in the statutes of the Congregation, so that it may be known to all.

In the Abbatial Court of Saint [Name], a criminal process was instituted at the request of A and her daughter E. against Aloysius for rape with pregnancy, promise of marriage, and attempted abortion. The process, having been brought to a conclusion, and with the defenses presented from time to time, on January 3rd of the current year 1839, the cause was proposed in the Congregation of the Eminent Cardinal Abbot, and by unanimous vote, a decision was reached in favor of: therefore, let Aloysius be dismissed from the position he currently holds, in accordance with the aforementioned. The judgment contained the following: it was established that, given the circumstances, disputes arose between the parties; and an admonition was given to the advocate regarding certain actions taken in the defense, and certain other actions which were deemed inappropriate. After communicating this resolution to the plaintiff and her daughter E., they appealed

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to the Abbatial Court. Following this appeal, the aforementioned Aloysius and the Abbot sent the entire process to this Congregation of Bishops and Regular Canons, with a restriction concerning the Fiscal Court, and requested that it be examined, along with the defenses presented by the parties in the first instance, to determine whether the judge had rightly intervened in the appeal. The judge, therefore, considered it appropriate to inform a member of the Holy See, worthy of the highest respect, and to propose the question to the Fathers of law, so that they might examine it in a meeting held on February 22nd of the current year, for the purpose of reaching a resolution concerning this matter.

[*Latin ed. p. 550*]

550. DOCUMENTS: In order that the causes in the appellate stage may finally be expedited, if an appeal is presented to this Sacred Congregation, We, mindful of the interests of this Court, hereby declare to the ministers of this Court that, when, within ten days after the notification of the sentence, the condemned party presents an appeal to this Sacred Congregation, and that appeal is admitted, and the admission to the Congregation is notified, the Ordinary shall be informed.

RESOLUTION: In the general Congregation held in the Vatican Apostolic Palace on February 22, 1839, the Most Reverend and Most Reverend Fathers decreed: "Affirmatively to the first part, negatively to the second part; the guarantor shall provide security for the expenses of both the first and subsequent judgments in the event of success." Furthermore, it is ordered that the Most Reverend Ahias be informed, also for the purpose of appointing a defender within twenty days.

(1) It may be asked whether what is stated here contradicts what we have stated in Article XLI (page 396), which is found in Appendix V, Article XLIV of the Instructions of the Sacred Congregation of Bishops and Regulars of June 11, 1880 (page 387). We clarify our meaning. In Article XLIV, the Sacred Congregation of Bishops and Regulars proposed a method for carrying out notifications and notices for those Courts which, due to unfavorable circumstances, do not have a process server (curator). However, when we speak of the notification of a sentence, we have stated that the assistance of a process server is necessary. One might ask: "But how can the services of a process server be required, when the method of Article XLIV was devised precisely because some Courts do not have process servers?" We reply: It is one thing to speak of a process server who traverses the entire diocese, for the purpose of delivering notifications, notices, and summonses to the accused; it is another thing to have a person attached to the Court who, within the limits of the city in which the Court is located, can perform such acts. Therefore, since it is not necessary to notify the sentence to the condemned party, but it suffices to notify it to his defender, and to grant the defender the right to appeal, according to what is stated in the

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decree of December 18, 1835, articles II and III (Volume XIII, page 384), the tenor of which should be understood to have been inserted verbatim in the aforementioned Instructions of June 11, 1880, as can be seen from Article XXXVII (said Volume, page 333), and since it is necessary for the defender to reside where the Court is located, we do not consider it inappropriate to use that person, who is attached to the Court or to the Bishop himself, to perform the duties of a process server for the notification of the sentence, and for all matters relating to the appeal. Indeed, since appeals should be favored as much as possible, for if an appeal is peremptorily filed, the sentence loses its force, we believe that, in order to avoid any problems, it is safest to notify the sentence to the defender, both through the process server and through the method of Article XLIV; however, the ten-day term should begin to run from the day on which the last notification is received by the defender or the accused.

[*Latin ed. p. 551*]

DOCUMENTS – To the Ordinary, with the customary notification, that within twenty days, a peremptory order must be given by the Ministers of the Curia to the appellant, by a brief act, that if he wishes to pursue the appeal, it is necessary that, within the peremptory term of twenty days, he appoint in this city an Advocate or Procurator approved by the Roman Curia, and that he be certain that the defender he has chosen actually assumes his patronage; and, after the usual deposit, he shall receive the case from the presiding Judge; if, after this term has passed without result, it shall be understood that he has renounced the benefit of the appeal, and, consequently, the Holy Congregation will declare the appeal time-barred. If, however, the instigator or one adhering to the Fisco appeals, and likewise the appeal itself has been accepted by the Holy Congregation, and admission has been notified to the Ordinary, in this case, since the appeal becomes common to both the appellant and the appellee, the appeal interposed by the former and accepted by the Holy Congregation must be notified to the latter, and, along with the decree of the Holy Congregation by which it is admitted, it must be ordered that, unless he appoints his defender among the Advocates or Procurators of the Roman Curia within the peremptory term of twenty days, he shall be considered to wish to abstain from intervening in the judgment; and, at the request of the instigator or one adhering to the Fisco, the proceedings shall be pursued up to the decision of the case, inclusive, without further appeal. Furthermore, the instigator...

[*Latin ed. p. 552*]

552. To those who are accused or are parties in a legal matter before the Fiscal Court, the proceedings will continue until the decision of the case is reached, inclusive, and without further consultation. Furthermore,

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the accuser or the party appealing must receive that notification, as has already been established for the condemned who appeal to the Holy Congregation. Such notifications, accompanied by the corresponding report of the court official, must be transmitted to the Holy Congregation. It is also to be remembered that the notifications of the sentence and the appeal, together with the report of the court official, must be inserted and attached to the respective proceedings, which, in accordance with Article IV of the decree of December 18, 1835, must be transmitted without delay to this Holy Congregation, along with the briefs and arguments, and also with a certified copy of the sentence, while the original must remain with the respective Curia, which will keep a special register of it in the criminal chancery.

May Your Eminence acknowledge receipt of this circular letter, and I pray that the Lord grant you all good things.

From Rome, August 1, 1851.

As your brother,

FR. A. F. D.

August 1st
Brother Prefect

FR. A. E.

CARD. ORIOLI

Prefect
Constantinople
Secretary

CARD. ORIOLI

Patriarch

(1) This is the notification for the Reverend D. [name], who is to be appointed Patriarch in the City of Constantinople, to the Advocate or Procurator approved by the Roman Curia, who will undertake to handle his case.

[*Latin ed. p. 553*]

VOTE Regarding the benefits of funerals of Cardinals, to be given to the parish and titular church. MOST EMINENT AND REVEREND PRINCE, Peter, blessed be his memory, Cardinal De-Silvestri, had designated the parish church of the Most Holy [Saints] as the place where he wished to be buried. On the other hand, the Chapter of Saint Mark Celsus and

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Julian contends that it has the right to receive half of the benefits from the funeral. For in the year 1875, the last day that a Cardinal died in his titular church, his remains were not placed in that church. Furthermore, in his final testamentary disposition, he stipulated that, provided that the laws of Rome, which certainly conflict with the canons, do not fully agree with this, at least his body should be buried in the church of Saint Mark, as befits his title of Cardinal. However, despite these stipulations, which are urged upon him, and although the last will of the deceased cannot be demanded in the final burial, nevertheless, these two Chapters, from the cemeteries of Rhodes, where he had his natal celebrations, were transferred to Your Eminence, and Your most honorable judgment has brought forth a controversy, requiring a definition, concerning the following question: In the case of the benefits of a funeral, are they due to the parish church of Saint Mark, or to the Chapter of Saint Mark Celsus and Julian? The first of these two Chapters, citing paragraphs 32, 35, 36, and 37 of the Statutes of the Roman Clergy in Book I, Title V, believes that it has the right to receive a portion of the benefits of the funeral from the integral church. Indeed, this matter was brought to me, Eminent Prince, so that I might examine the question and give my opinion. The same question arose after the death of the blessed Cardinal Tarquini, between the Chapter of Saint Mark and the parish church of Saint Mark.

[*Latin ed. p. 554*]

55. And you, Saint Nicholas, in the prison of Römmpan, and Saint Lucy, who are here, offer your prayers. And since the matters are now settled, which were found to be in accordance with the common principles of law prescribed in the Statutes of the Roman Clergy, and considering the mutual agreement reached with the Common Fund, and the special transaction proposed to the faithful concerning the deceased, which they accepted; and since, on the 19th of May of the year 1874, I informed them of the arrangements, and in order that these controversies of this kind may not be raised again, I believe it is proper to state what has been decided.

Therefore, I have decided, as stated in Chapter XII concerning Burial Places, and Chapter V, that each faithful person should examine the procedures, and, under the same title, the Parish Priest reserves the right to determine the portion of the funeral expenses that can be allocated, as is the general rule for similar controversies.

Therefore, after legal examination of the matter, the judgment is as follows: once admitted, the deceased Cardinal, according to the Statutes of the Roman Clergy, is to be buried in the titular church of Saint Mark.

In truth, in this matter, although this should have been clarified, this church, which is a common burial ground outside the walls of the city or town, should also participate in the expenses of the funeral; nothing prevents this, provided that the laws in force, which apply indiscriminately,

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do not prohibit it. In the year 1817, a decree was issued by the Sacred Congregation, in which it was prescribed that the burial of the dead should take place in urban churches, and that bodies, except for Cardinals, should be buried in the public cemetery. Therefore, I believe it is proper to propose the establishment of a cemetery.

Negative to the first part; affirmative to the second part.

In order that the truth and fairness of this response may be clear, I state that, although it is permissible to conceal the expenses, whether by statute or by legitimate custom, they must nevertheless be paid.

[*Latin ed. p. 555*]

Concerning these matters, no innovation ought to be introduced through this disposition, having regard both to the established order and to the laws. Consultation of the year 1817, and subsequently, the laws of the Holy Congregation concerning cemeteries in the Kingdom of Italy, have prevailed and have been accepted as canonical law. Furthermore, questions have arisen concerning the proper place for exposing the body of the deceased, and the Parochial Church and the cemetery, in which the deceased had a family tomb, have been concerned. Therefore, the Holy Congregation has been solicitous to resolve these controversies, especially concerning the place where the body should be exposed for the benefit of the funeral rites, and whether the right to expose the body in that place belongs to the Parochial Church, or to another Church, or to the family of the deceased. It has been consistently maintained that the right to expose the body for the benefit of the funeral rites belongs to the Parochial Church, provided that the body is exposed in the public cemetery, and that the Parochial Church retains its canonical portion, even if another Church is located in the same cemetery. Therefore, the fourth part of the expenses of the funeral rites belongs to the Parochial Church, and this right is maintained even if the deceased had a family tomb in that cemetery.

In this matter, we consult the Statutes of the Roman Clergy, and we find in Chapter VIII, § 9, that it is stated: "Cardinals, indeed, are buried in the churches of which they are titulars." Therefore, the proper burial place of a Cardinal is in his titular church. Since it has been established that Cardinals are also subject to human law and are buried in public cemeteries, the right to burial with its associated fees will be determined by the Holy Congregation, as has been the case in previous instances.

Thus, in Pergola on December 18, 1824, and in Tivoli on March 17, 1827, and finally, in Iesi on February 26, 1864, and in Forlì on September 16, 1871, the Holy Congregation gave responses in the same sense.

From these numerous and concordant responses given by the Holy Congregation, it is clear that the right to burial with its associated fees belongs to the Parochial Church, as has been previously established. For, according

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to legal principles, the titular church...

[*Latin ed. p. 556*]

As was stated above, it is clear that this [church] serves as the common burial ground of the Church, fulfilling a common and titular function, and that it presents the same rights as the churches of Saint Celso, Saint Julian, and Saint Mark, as established by the Roman Capitularies.

Regarding the case under discussion, the decree of Pope Sylvester, indeed, established both the Cardinal's title and his burial place, stipulating that if the Cardinal of Rome had died, he should be buried in the parish church designated for his title. However, it can be argued against this, that the decree in sections 32 and 35 of chapter IV seems to require the actual burial of the body, so that Saint Mark's church would participate in the burial; therefore, the Cardinal's body would be buried in the common burial ground (of the titular church of Saint Mark). Section 32 reads: "Provided that in such a case, it is considered as if the burial took place in the church itself." And in section 35: "Although in titular churches, the body is only buried there."

However, any difficulty vanishes with prudence, and we can apply paragraph 35 of chapter IV of the same decree to our case, which was enacted in the year 1862, and reads: "However, titular churches of Cardinals are exempt from the common law of cemeteries, so that the parish has the right to receive the expenses of the funeral, even if the body is only buried there." Indeed, since the same decree, in chapter VII, section 1, recognizes an exemption for funerals, and since, in the absence of any provision that would prohibit the burial of the deceased Cardinal in his own titular church, it cannot be presumed that the decree intended to exclude the titular church from the benefits of the funeral, especially in the hypothesis in which, according to the aforementioned chapter IV, the parish is admitted to participate in the funeral expenses, having a designated place for the burial of Cardinals in that church. But on the contrary, if the church has a designated burial place for Cardinals, then the reason for the funeral and burial is implied in that designation.

[*Latin ed. p. 557*]

557. It was decreed that in all future cases, the law concerning public cemeteries should be observed in the aforementioned churches, namely, the right to burial, according to canon law, and that, even if the real deposit of the deceased was not verified, this right would be maintained and represent the Titular Church. Therefore, it was also recognized in these same churches that the real burial of the body in such a church conferred upon the religious order the right to participate in the funeral benefits imposed by the Sacred Council, as was the case between the Most Reverend Fathers of Carmel and the Reverend Fathers of San Mercuriale, which was

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defined on September 16, of the same year, in chapter 8, but in the year 1871. And the Sacred Congregation, following the already accepted rule in other cases, defended the right of these religious. Hence, according to the opinion of the Sacred Congregation, the prescriptions mentioned above, specifically concerning the right to bury the body in the church that was the Titular church, did not change anything regarding the rights already acquired by the various churches concerning funeral benefits. This rule will be observed in the case of a family tomb and in the case of the tomb chosen by the Cardinal himself. For a greater understanding of the matter, it is necessary to add the following. Before the law concerning public cemeteries came into effect, it was the case that within the territories subject to the temporal authority of the Holy See, churches in which some family had a tomb of their own could grant the right to burial, even if the condition of real burial was not fulfilled in those places; thus, if the deceased had arranged for his burial in a particular place, the church in which the family tomb was located would not be excluded from the benefits of burial. Nevertheless, after the enactment of that law, it seems that the Rhodigiano case is not applicable to our case. Indeed, from what has been stated, it can be inferred that the Rhodigiano case, in which the deceased was buried in a place other than the church, does not apply to our case.

[*Latin ed. p. 558*]

8oS The aforementioned vow represents, indeed, that which existed, as often mentioned, in the law of the city of Bern, which, however, pertains not to Roman Churches, but to others. These forms of the Statutes of the Roman Clergy present another difficulty, namely, that they have no weight, and demonstrate the following:

1) When it is considered whether a Cardinal, in some Church, has the right to dispose of the necessities, which the deceased, Saint Mark, was compelled to endure. Already, while he lived, he had a tomb, and otherwise, that Church, simply by virtue of the title, would have the right to transfer the right of burial from one to another. Furthermore, the Church also serves the Congregation of the Council to receive the emoluments of the funeral; as is evident from several resolutions of the Congregation, in which the Government has not recognized any legal basis for the burial of Religious families when an act of burial is performed, which pertains to their Churches, whatever may be the case. Therefore, I conclude: from these points, as I have stated, with the Congregation's permission, and with the addition of this better judgment, it seems to me that the emoluments of the funeral of Cardinal De Silvestri should be divided equally between Saint Mark's Church and the Chapter of Saint Celsus and Saint Julian.

Hinc it fit ut in nostro casu Capitulum sancti Romaedie 17 Martii 1876 Franciscus Promotor Fiscalis. coemeterium Rhodigianum bene potest Ecclesiam sancti Marci repraesentare. Hanc conclusionem probavit Emus et

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Rmus Cardinalis Patrizi ca- S. D. N. Papae in Urbe Vicarius, non die 1 Aprilisan . 1876, eteadem potuit in Ecclesia s. Marci sepe- conclusio constituit liri, casibussimilibus , quideinde con- 3) Finally, the reason for which the funeral was transferred to the Rhodigianum cemetery was not another rule for...

[*Latin ed. p. 559*]

S59> FROM THE HOLY CONGREGATION CONCERNED WITH ECCLESIASTICAL MATTERS OF AN EXTRAORDINARY NATURE, A DECREE whereby questions arising in Bosnia concerning the assignment of parishes are resolved. Since a question had arisen concerning the assignment of parishes between the Most Reverend Archbishop of Vrhbosna and the Missionaries of the Order of Saint Francis, who were already present in Bosnia, the Holy Congregation, concerned with ecclesiastical matters of an extraordinary nature, issued a Decree on the tenth of December, 1881, by which these Religious Franciscans were granted the power to bring their special rights before the Apostolic See. Meanwhile, in order that the matter might be settled amicably, the Archbishop and the members of the Order of Saint Francis entered into negotiations, in which the Provincial offered to cede thirty-two parishes; but since they could not agree on this number of parishes and on the manner of the cession, they again addressed the aforementioned Sacred Congregation, which, after mature deliberation, ratified the cession of the aforementioned number of parishes, and furthermore added the parish of Banjaluka, and two others, to be assigned by mutual agreement, and judged that the matters following should be determined and declared. I. The aforementioned parishes, to the number of thirty-five, which are to be ceded by the Religious Franciscans to the Archbishop, shall in the future be subject to ordinary assignment, and twenty-four of them will be in the Archdiocese of Vrhbosna, namely: (followed by the names of 24 parishes). Nine will be in the Diocese of Banialuka, namely: (followed by the names of the parishes), to which the two parishes mentioned above shall be added. The remaining parishes (58) in the Dioceses of Vrhbosna and Banialuka will remain regular and will continue to belong to the Religious Franciscans. II. In the parishes subject to ordinary assignment, a secular priest will succeed the regular priest; this priest will not be obliged to hand over the domestic property. However, if the Ordinary wishes to entrust the administration of any of these parishes to a regular priest, this priest will be obliged to pay the tribute that he currently pays to his community, and the Provincial of the Order will propose this in such a way that, according to the Apostolic Constitution "Firmiter," he may be removed at the will of the Prefect of the Regulars. III. In the appointment, transfer, and removal of rectors of regular parishes, all that which is established in the aforementioned Constitution "Firmiter," and in the Instructions of the Holy Congregation of Propaganda Fide of July 23, 1787, and October 3,

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1852, for Bosnia and Herzegovina, shall be observed.

[*Latin ed. p. 560*]

§60 DECREE I. Concerning the division of the territory of parishes and the appointment of a rector for a new parish established by such division, the following shall be observed, as prescribed in the Apostolic Constitution "for England and Scotland" by the Roman Pontiffs. His Holiness, Our Lord Leo XIII, by Divine Providence, in an audience granted on March 13th to the undersigned Secretary, Prefect Extraordinary of the aforementioned Sacred Congregation for Ecclesiastical Affairs, granted all of the above, ordered that this be published as a Decree and recorded in the official acts of the Sacred Congregation. Contrary opinions to the contrary notwithstanding. Given in Rome, at the aforementioned Secretariat of the Sacred Congregation, on March 14, 1883. Aloysius Pallotti, Secretary.

FX SACRED CONGREGATION FOR INDULGENCES. DECREE, by which an Indulgence of three hundred days is granted to those who recite the following prayer.

Most Blessed Father! Peter Beckx, Superior General of the Society of Jesus, prostrate at Your feet, humbly requests that Your Holiness deign to grant some Indulgence, to be enjoyed by all Christians of both sexes, to the following prayer, taken from the Spiritual Exercises of Saint Ignatius. For which grace, etc.

"Receive, O Lord, my entire liberty. Receive my memory, my intellect, and my will. Whatever I have or possess, I offer to You; I restore it all to You and I dedicate it entirely to Your most holy will. Grant me only the love of You, and I am rich enough; I ask for nothing more."

His Holiness, Our Lord Leo XIII, in an audience held on May 26, 1883, by the undersigned substitute of the Secretariat of the Sacred Congregation for Indulgences and Sacred Relics, benignly granted to all Christians of both sexes, who shall at least with a contrite and devout heart recite the aforementioned prayer, an Indulgence of three hundred days, to be gained once a day. This present decree is valid forever, without any exception. Contrary opinions to the contrary notwithstanding.

Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on May 26, 1883.

Al. Card. Oreglia a S. Stephano.

Prefect.

Joseph M. Canonicus Coselli, Substitute.

[*Latin ed. p. 561*]

My Letters from Leo XIII to the Most Reverend P. Pustet concerning the new edition of the works of Cosmas Alamannus, S.J. – *Summa* of all philosophy. LEO PP. XIII. Beloved Son, greetings and Apostolic blessing.

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It has been pleasing to Us to learn from your letters that you have undertaken the excellent project of publishing the *Summa* of Saint Thomas Aquinas, which was formerly compiled by Cosmas Alamannus, a theologian of the Society of Jesus, from the immortal writings of the Angelic Doctor, and arranged in order according to the parts of philosophy, which the same Angelic Doctor treated with such remarkable wisdom in all his works. Indeed, Beloved Son, We hold this work in high esteem, for it not only contains the philosophical teachings of the Summum Aquinas in His own words, but also presents the conclusions that were proposed, the arguments fully and faithfully presented, which, while demonstrating the philosophical method, refute those who contend that the Angelic Doctor was not influenced by the reasoning of Aristotle, but solely by his authority; and We believe that others, as well as those whom We have commended, can draw wisdom from the same work. Like a true and sincere Magister, the Doctor happily illuminates the minds of men with the light of philosophy. Therefore, it is pleasing to Us that you, as you indicate in your letters, have determined to dedicate all your efforts to carefully and accurately preparing the edition of this work, and to incorporate the works of other scholars, in order to serve those who, heeding Our exhortations, pursue solid wisdom amidst the darkness and deceptions of false philosophy. Since this Your plan, Beloved Son, benefits the best of studies, We, without hesitation, commend it, and We are most willing to support Your industry and labor, so that all who truly love knowledge may readily contribute. Praying that divine benevolence may be favorable to Your best intentions, We impart the Apostolic Blessing which You request, as a testament to Our paternal affection for You and Your family, forever in the Lord. Given at Rome, near Saint Peter's, on the 17th day of April, 1883. In the sixth year of Our Pontificate. LEO. Acts, Vol. XV, page 180. PP. XIII. 36.

[*Latin ed. p. 562*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF MURANO AND OF THE JURISDICTIONAL POWER. Dated 17 February 1883. SUMMARY OF THE CASE. In the year 1877, the Auxiliary Bishop of Murano reported to the Holy Congregation that there exists a chapel dedicated to Saint Cataldo, located within the territory of his diocese, near the town of Aviliani, which belongs to the diocese of Potentia. In this chapel, divine services are performed, and sacred functions are carried out by the clergy of Aviliani, especially during the harvest season. It is alleged that, perhaps through the tolerance of the Bishop of Murano, someone has come to believe that they have patronage over this church; and that they can exercise all kinds of jurisdiction there, and receive confessions from the faithful, without the consent of the local Ordinary. Since this manner of acting disturbs the jurisdiction, and opens the door to many confusions in its exercise, the petitioner requested that this disturbance be put an

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end to, by the supreme authority. DISCUSSION. *GYNOPTICAL* [This word likely refers to a visual or evidential argument]. DEFENSE OF THE BISHOP OF MURANO. It is certain, as evidenced by the confession of the Bishop of Potentia himself, that the chapel of Saint Cataldo, although bordering the diocese of Potentia, is nevertheless located within the territory of the diocese of Murano. Furthermore, it is not only materially, but also formally, subject to the Bishop of Murano, as evidenced by the records of the visitations. Indeed, it has been consistently visited by the Bishops Martucelli and Gigli, who held the seat of Murano from the beginning of the century until the present time, as evidenced by the records of the visitations carried out in the years 1834, 1841, 1848, 1852, 1857, and 1876. Regarding the earlier periods, this is proven by the letters of the modern Antistite [Bishop].

[*Latin ed. p. 563*]

MURANA AND POTENTINA 563. The inhabitants of Murana appeal to the court of Potentina. And indeed, from a document of the year 1734, it is clear that a visitation was made by the Bishop of Murana in the church of St. Catald. If, at any time, this chapel was visited by the Bishops of Potentina, this can be explained by the fact that it is located within the territory of the diocese of Potentina; otherwise, whenever this occurred (as in the year 1730, and again in the year 1834), immediately and consistently, the court of Murana protested, and Potentina yielded. Given these established facts, it appears that the jurisdiction of the Bishop of Murana over the church of St. Catald is clearly established. Indeed, the jurisdiction of the Bishop over all churches within the boundaries of his diocese is founded in law, as the Doctors commonly teach, and as Benedict XIV teaches in Constitution 76, *Apostolicae servitutis*. Furthermore, the right and power to visit pertains only to those who have ordinary jurisdiction over a place, as is stated in chapter 1, Roman Canon, section H: Concerning *Censibus* in Uzes. Therefore, since it is certain that the church of St. Catald is located within the territory of Murana and has been consistently visited by the Bishops of Murana, the question in favor of this Bishop seems to be settled. However, it should be noted that if the clergy of Avigliano invoke their jurisdiction, or a right of patronage, or some exemption, or some custom, these matters should be considered. Firstly, concerning the patronage of this church, it is worth noting that Prince Ruffo, as the Bishop of Murana, wrote to the Bishop of Potentina, affirming this. Indeed, several things suggest that this Prince is the sole patron of the chapel. For he appoints the rector of the church and presents him to the Bishop of Murana; and this is the case today, and it has been observed to be so from time immemorial, as the procurator, who was previously with the Caracciolo family, clearly testifies. Furthermore, these Princes, as lords of the territory, have not infrequently been asked to provide for the needs of the church; indeed, when it was nec-

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essary, they took care to repair the sacred vestments, the altar ornaments, the confessionals, and the chalices.

[*Latin ed. p. 564*]

§64 MURANA and POTENTINA constructed the floor, and other similar things: all of which are confirmed both by the testimony of the procurator and by the acts of the visitation. With these facts established, any presumption in favor of the Avilian clergy must collapse. Indeed, as the Abbot teaches in the Rubric concerning patronage, number 3, and Barbosa, Book 3, chapter 12, number 12, and other authorities widely, the right of patronage consists primarily in the right of presentation of a cleric, to which corresponds the office of protecting the Church and confirming [its choices]. But when the Avilian clergy neither nominates a rector for the Church, nor provides for the needs of the Church, then they must be considered lacking in honors and burdens: and consequently, lacking in the right of patronage. Moreover, even if the right of patronage were granted and conceded to the Avilian clergy, jurisdiction would not be due to them. For the rights of the patron are properly four, which are enumerated in chapter 25, title concerning patronage, and which are included by the Glossary in those two verses: "To the patron is due honor, burden, and utility: he must present, preside, defend, and provide for the needy." As for honor, this is understood to mean a certain precedence in sacred functions and blessings that are usually performed in the church of the patron, as demonstrated in chapter 26, section 6, question 7, and as other authorities teach. Never are the rights due to the patron granted in such a way that he, if he is a priest, can perform sacred functions and hear sacramental confessions at his pleasure. Nor is the Avilian clergy aided by the asserted exemption of the Holy Cataldi chapel. Indeed, this would need to be proven. Furthermore, it is not sufficient to adduce any argument to demonstrate this; but a clear and enduring Apostolic privilege, or an immemorial custom, duly proven, is required, as decreed by the Holy Congregation on January 7, 1721, and confirmed by Clement XI on January 14 of the same year, and by Benedict XIV in Constitution 33, title 2, of the Bullarium. Again, a custom is considered proven only when, in some place, a prelate has exercised jurisdictional acts from time immemorial, and the Bishop, in whose diocese the place exists, has exercised the same jurisdiction throughout that entire time.

[*Latin ed. p. 565*]

MURANA and POTENTINA have had no part in these matters, nor have they ever interfered in them, as Benedict XIV states in *De Synodo*, book 13, chapter 8, sections 18 and 21. Furthermore, the clergy of Avigliano cannot invoke the Apostolic privilege in their favor, nor can they exercise perpetual and independent jurisdictional acts; indeed, (except on the feast

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day of St. Cataldus), the care of this church is entrusted to a chaplain-rector who is dependent on the patron prince and the Bishop of Murana. Therefore, the form of the exemption appears to be entirely lacking. The clergy of Avigliano, in the end, resort to custom, by which they attempt to prove that they have the right to perform the sacred functions in the church of St. Cataldus, and to hear the confessions of the faithful independently of the Bishop of Murana. It is worth noting that this custom, recently, with regard to the sacrament of confession, has been declared by the Bishop of Murana. However, it should be noted that Innocent XI, in the year 1700, decreed in a celebrated Bull that confessors, whether secular or regular, must not, under any circumstances, hear penitents without the approval of the local Bishop in whose diocese the penitents reside. This had already been defined by the Council of Trent, Session 23, chapter 17, on Reform. And this is consistent with the nature of the judgment exercised in the sacrament of penance, as the Council itself explained in Session 14, chapter 7: "Because, therefore, the nature and reason of that judgment require that a sentence be pronounced only concerning those who are subject to it," it has always been and is truly believed in the Church of God, and this Synod confirms, that no consideration should be given to the opinion that a priest expresses concerning him to whom he has no ordinary or delegated jurisdiction. What, however, can be said about the validity of custom in acquiring jurisdiction in this matter, is argued in chapter 2, on Penance and Remission, in the Sixth [Council of Trent]. Therefore, in no way does it appear that the clergy of Avigliano can administer the sacrament of penance in the church of St. Cataldus, based on custom, whatever that custom may be. As for the sacred functions and the celebration of Mass, although...

[*Latin ed. p. 566*]

566 In MURANA and POTENTINA, it is established that clerics from neighboring dioceses may be admitted, provided they present the appropriate letters of recommendation from their diocesan bishop and obtain his consent, as taught by Schmalzgrueber on itinerant clergy, number 5, section 3, and as daily practice demonstrates; however, the Congregation has repeatedly taught that bishops can compel not only their subjects, but even regular clergy, to observe the law, as stated in Lib. 8 Decret, page 78. Therefore, given this authority of the bishop, and since in matters of dispensation, no prescription is given, according to a well-known principle of law, it is entirely useless for the Avilian clergy to be summoned for the celebration of Mass according to this custom. DEFENSE OF THE AVILIAN CLERGY. On the other hand, the Avilian clergy maintain that, independently of the Bishop of Murana, they have the right, by virtue of both law and ancient custom, to access the aforementioned church, to celebrate Mass, to perform the customary functions on the feast of Saint Cataldo, and to exercise other rights. This can be demonstrated both from the history of this

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church and from numerous, both ancient and recent, documents. Firstly, it is established that at the beginning of the 15th century, the church of Saint Cataldo, which is the subject of this discussion, was founded by the Avilian clergy, and that they obtained patronage over it, so that nothing could be objected to by the Murana Curia. This is not only testified to by the Bishop of Potentina in his report, but also, which is the most significant, by the Bishop of Murana, Gigli, who clearly confirmed it in the year 1834. Later, as time passed, this church, weakened by the ravages of time, was almost completely destroyed, and some citizens of Avilian considered restoring it. To legally accomplish this restoration, they requested permission, not from the Murana Curia, but from the Potentina Curia in the year 1673. It is clear from the following decree, which was issued on July 21, 1673, by the then-Vicar Capitular, that the Potentina Curia favorably received the petitioners' requests: "Let the requested repairs to the damaged chapel of Saint Cataldo be carried out through 'private alms.'" Furthermore, it is established that in the following year, concerning the blessing of...

[*Latin ed. p. 567*]

MURANA and POTENTINA: In the year 567, according to Cataldi, when the image was to be placed in the restored Church, a certain priest, Charles di Masa, sought and obtained permission not from the Murana, but from the Bishop of Potentina, to bless it. This image of the saint was cast in bronze in the year 1674 for the devotion of the Avilian Chapter, and is printed on paper and distributed annually to the faithful who attend the rural Church on the feast day of Saint Cataldi. Indeed, the aforementioned image of Saint Cataldi is not kept in Murana, but permanently in the city of Avila; and, as the feast day approaches, it is solemnly brought by the Avilian clergy to the aforementioned Church, a fact entirely unknown to the Murana Curia, which, however, has never objected to such a practice. To all of this, one can add the statutes of the Avilian Church, drawn up in the year 1795, in which there is mention of the right of patronage of the Chapter over the Church of Saint Cataldi. It should also be noted that a certain question arose before the Potentina Curia, concerning the celebration of the feast of Saint Cataldi in the Church in question, between the clergy of Avila and the clergy of the land of Roti. The aforementioned Curia, without receiving any objections from Murana, issued a judgment on this matter on July 16, 1831, in which it declared that the right of patronage of the aforementioned chapel under the title of Saint Cataldi, as well as the right to perform the sacred functions therein on the tenth of May of each year, when the feast of the same saint is celebrated, with the frequent attendance of the people from neighboring lands with devotion, belongs to the noble Chapter of the city of Avila, and cannot be disturbed by anyone. From all of this, it appears that the Chapter has obtained and peacefully possessed, by long prescription, both the patronage and the

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rights to perform the sacred functions in the rural Church of Saint Cataldi in Avila. And it is evident, first of all, from what has been said, that this possession has always proceeded peacefully, because when all the things mentioned were being done, the Murana Curia remained completely silent, not bringing up any rights or objecting to anything.

[*Latin ed. p. 568*]

MURANA AND POTENTINA. Indeed, what must be most carefully considered in this matter is that the Bishops of Murana have never presented any reason to oppose the actions of the clergy of Avigliano; rather, through their silence, they have left the exercise of the rights of that clergy undisturbed in their peaceful possession. Furthermore, the Bishop of Murana, Gigli, explicitly recognized the rights in question, and, following the example of his predecessors, maintained them, as they had been established by prescription. Given these circumstances, the Chapter of Avigliano appears to possess, by right, both the patronage and all the actions to be performed in the church of Saint Cataldo, which it has continuously and peacefully performed up to the present, and in which it cannot legitimately be disturbed in the exercise of this right, established by the usage and possession of centuries. Having presented these considerations from both sides, the following point was proposed for clarification: Whether and by whose favor the jurisdiction in this case is established.

RESOLUTION. After discussion by the Sacred Congregation, on February 17, 1883, it was decided to respond: Affirmatively, by the favor of the Bishop of Murana; however, the right of the clergy of Avigliano to perform the functions according to custom remains firm, except for confessions, for which access to the same Bishop's faculty must be sought, and furthermore.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. The right to perform the sacred functions in a church of a different diocese, without the license of the local Ordinary, having been preserved in favor of the clergy of Avigliano, from an ancient possession; which, according to Cardinal De Luca, *de beneficiorum disceptationibus*, 32, nos. 2 and 4, provides a better title of worldly right, so that it is equivalent to a privilege or an Apostolic indult.

[*Latin ed. p. 569*]

MURANA and POTENTINA 569^ II. From an unmemorable custom, or from peaceful possession, whatever it may be, no power to impart sacramental absolution can be acquired, as is stated in chapter 2 of the book *De Poenitentia et Remissione*, in the Sixth. III. For the nature and reason of judgment dictate that sentence should only be passed upon those who are subject to one's authority. IV. This matter has always been held true

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in the Church, and as most true, it is confirmed by the Tridentine Council, Session 23, chapter 17, concerning reforms, that the absolution granted by a priest to one over whom he has no ordinary or delegated jurisdiction is of no consequence.

TAURINEN. CONCERNING THE DIVISION AND ERECTION. On March 17, 1883.

A SUMMARY OF THE FACTS. In the Archdiocese of Turin, there exists a parish church located in the place commonly called Cornaleno, to which belong several small towns, among which is Vallongo, where a chapel has been built, dedicated to Saint Charles, to which many families in the surrounding area belong (approximately 385 souls), for whom it is difficult to attend their own parish church. Wishing to address this difficulty, and also desiring to promote the spiritual well-being of the inhabitants of that region, in which he himself was born and spent his childhood, the Archdiocesan Canon, a penitentiary, considered the possibility of establishing a new parish there, and decided to build a suitable church with his own funds, along with a comfortable residence for the parish priest, and to establish a fitting endowment for the support of the same parish priest. Having consulted with the Archbishop regarding this matter, and the Archbishop approving of his intentions, on May 14 of the year 1882, he issued an edict against those who might object, in which, among other things, he determined the boundaries of the new parish to be established.

[*Latin ed. p. 570*]

570 TAURINEN. The parish priest, but truly the pastor of the village of Cornalense, and indeed the patron of that same parish church, Count Eugenius de Maistre, and some of the inhabitants, rose up against such an erection and sent protests to the archiepiscopal court, from which it was easily deduced that their minds were so disposed that they would not acquiesce in the simple judgment of the Archbishop. Considering therefore such dispositions of mind, the canonical penitentiary, unwilling nevertheless to decline the judgment of the Ordinary, appealed to the Sacred Congregation of the Council. The Archbishop, having been requested for information and a vote, after hearing the parish priest and others with an interest in the matter, reported that he clearly saw in this case the extreme requirements prescribed by the sacred canons for the erection of a new parish.

AS TO WHAT APPEARS TO FAVOR THE ERECTION OF A NEW PARISH. And first, it must be noted that, although the division of parishes is a matter very odious in law, since it implies alienation, as the authors Ahias in Cap. Ad audientiam in 1 notabilium de Eccles. aedi f.; Lotter in de re benef. lib. 19, 28 num. 4; and the Rota in p. 7 Recent. Decis. 68 num.

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1, teach; nevertheless, if there are very serious reasons, such as evident benefit to the Church or urgent necessity, it must certainly be admitted, according to Cap. Sine exceptione 12 quaest. 2. Indeed, if such reasons are present, neither dissent from those with an interest, nor the opposition of the pastors themselves, can have so much force as to be able to prevent the division, as is stated in Trident. Sess. 21 Cap. 4 de Ref. and as the Sacred Congregation of the Council has taught many times, especially in Ianuen. Dismemb. 25 January 1879; in Neten. Dismembr, and the sacred functions of law 26 April 1879 (1). Furthermore, in the matter of such necessity and utility, no one will doubt that the reasons are present. (1) Ianuen, has Vol. X I I , 2 8 7 ; Neten. Vol. XIII , 6 0 .

[*Latin ed. p. 571*]

TURIN. 57. Regarding the first point, several causes of necessity are cited by the aforementioned authors: among these, the most important is the difficulty of accessing the parish church to receive the sacraments and to hear the divine services, as is expressly stated in the aforementioned decree of the Council of Trent. Therefore, it legitimately follows that, above all, the distance of places constitutes a necessary cause for the division and the erection of a new parish, as is stated in chapter 4. Although John Andrew, Cardinal Abbot, and others seem to require an excessive distance for this, it is true that a great length and the difference in roads are not required, as observed by Ant. de Butr. n. 3 in ver. distare, cited in chapter. But only such a distance is required that, because of it, access to the larger church is not easily available to the parishioners. Therefore, for the cause of division, it is sufficient that the parish of the ancient church is so large that the people, especially in difficult times, cannot, at convenient hours, gather there for the divine services, as stated by Fagnanus in Chapter "Ad audientiam" n. 18. Therefore, according to the common opinion of canonists, that region is considered sufficiently distant for division, which is two miles away from the parish church; thus, S. O. C. in Verulana Dismemo, March 10, 1862, §. This is in accordance with Pyrhing in "ius can." chapter 16, n. 31, and Reclus, "de re parodi," p. 1, c. 12, n. 87. Indeed, these are the extreme requirements of the law for establishing a cause of necessity for the erection of a new parish, and it abundantly appears from the testimony of both the canonical penitentiary and the Archbishop that this is the case. However, this necessity is increased even more by considering the difficulties that arise so that the faithful may access the parish church at convenient hours to receive the sacraments and to hear the divine services. These are such obstacles that, even without distance, they can constitute a legitimate cause for division; Fagnanus in Chapter "Ad audientiam" concerning churches, n. 19. Furthermore, not only necessity, but also the evident utility of the

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church, requires the erection of a new parish.

[*Latin ed. p. 572*]

572 TAURINEN. Let it be granted in this case. Indeed, if a small amount of general benefit, which always tends to accrue to the Church from the appointment of a proper parish priest, is omitted, in place of mercenary vicars; and if the principle of equity is also omitted, which does not allow the greater part of the faithful to serve the lesser; it seems that this one thing cannot be omitted, as the Archbishop asserts, namely, that it is easier for children to receive religious instruction in a newly established church. For parents will be more willing to send their children to the nearer parish, while at present they do not care to seek out the older parish, which is too far away. This single benefit clearly suggests the erection of a new parish. But there are also other advantages in this case, which are not to be disregarded, such as that which concerns the association of the deceased, which would be easier in a new parish. Therefore, from what has been adduced so far, it seems abundantly clear, both as to necessity and as to utility, the division and erection of a new parish. But if any ambiguity still remains, it seems to preclude all possibility of doubt, both because the Archbishop openly confesses that all the extreme requirements for the erection of a new parish are present, and because of the fact of the inhabitants of Vallon go. For, in order to provide some remedy for their needs, they have been retaining a chapel for ten years now. Therefore, with a superabundant number of parishioners for a new parish, and with the reasons admitted that suggest the erection of the same, a positive answer seems to be required to dismiss the proposed doubt. And this even more so, because that odiousness, which is always associated with divisions, seems to be absent in this case. Indeed, in this case, the division does not bring any prejudice to the rights of the parish priest; because, through the erection of a new one, the endowment of the old parish is not diminished; but moreover, it frees the parish priest from the burden of administering a part of the parish, which entails greater labor, either because of the greater number of faithful or because of the distance from the residence. If, however, the parish priest suffers any detriment from the diminution of the income of the rectory, which, upon calculation, is said to be...

[*Latin ed. p. 573*]

TURIN. The number of parishes barely reaches 573, a figure that approaches the maximum of 45; this decrease is compensated by a reduction in the workload. It should not be said, without dismemberment, that the needs can be met by the appointment of a curate, dependent on the parish priest. Indeed, setting aside the fact that such a curate should always be provided by the parish priest, which is not the case here; nevertheless, it is certain that, when there is a proven need for dismemberment, especially

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due to the distance of the places and the difficulty of access, the Council of Trent clearly states in Session 21, chapter 4, cited above, that a place is suitable for the appointment of the proper parish priest. Furthermore, the ministry of curates should only be used rarely and prudently in the care of souls, in accordance with the mind of the Council of Trent in Session 24, chapter 13, concerning the form, so that each parish should have its own particular and permanent pastor, who may know his flock. To this, the Sacred Congregation of the Council adds, in its decree of January 25, 1878: "It is to be understood that this remedy [the curate] should only be admitted rarely, prudently, and not without due consideration, as stated by Van Espen, *Eccl. Law*, page 2, section 2, title 1, chapter 3, number 30; Ursaja, *Eccl. Disputations*, volume 1, page 1, discussion 14, number 93; Cardinal De Luca, *On Tithes*, discussion 12, number 12; and the Rota in *Decisions*, 78, number 52, *Ansaldo*." Once, therefore, the necessity of dismemberment and the erection of a new parish have been admitted, it is also necessary to consider the concerns of both the parish priest and the patron, as well as the inhabitants of the place of Cornalense, according to the Council of Trent, in the aforementioned Session 21, chapter 4, and Alexander III in the Constitution *Ad audientiam*, chapter 3, X, *De Eccl. aedi f.*, III, 48. The judgment that is usually held in honor, especially in such matters, is that of the Ordinary: since Bishops are presumed to be more informed about the affairs and needs of their diocese, as stated by Rebuf in *On the Practice of Benefices*, part C, 1, on the erection of parishes. To this, the Sacred Congregation of the Council adds, especially in the decrees of Massanena and Populonia, August 23, 1879. But, on the contrary, in the decree of Ivrea, August 23, 1879.

[*Latin ed. p. 574*]

574 TAURINEN. If the Most Reverend Fathers should deem the erection of a new parish in the district of Vallon go to be necessary in this case, it appears that, of their own accord, the portions belonging to the parish of Casanova, as designated in the Archiepiscopal edict, should also be subject to division. Although the pastor of that church objects, claiming that the division of those portions is not necessary, it is nevertheless certain that they will derive the greatest benefit from the division, since it will be easier for the inhabitants to access the new parish. Therefore, since it is manifest in this case that either the utility or the necessity of erecting a new parish can be concluded with right and reason, it seems that "there is a place for division." And this even more so, because, on the one hand, no one is harmed, and, on the other, the greatest good of the faithful and the increase of divine worship are considered, as both law teaches that what does not harm one and benefits another ought to be done.

THOSE THINGS WHICH ARE ALLEGED TO BE OPPOSED TO THE ERECTION OF A NEW PARISH. On the other hand, he who defends the in-

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terests of the pastors and the patron De-Maistre, presents seven arguments by which he demonstrates that there is absolutely no place for division and erection in this case. From the first chapter of his argument, he asserts, with certainty and according to the law, that division is altogether odious, since it implies alienation; and therefore, it should not be undertaken unless it is found to be necessary after other remedies have been tried; Fagnanus, *Decretorum* lib. 3, cap. *Ad audientiam num.* 14; Bouix, *Tractatus de Parocho*, part. 2, cap. 4, prop. 1; Cardinal De Luca, *In Parte V, annotationes ad S. C. Trid.*, disc. 16, num. 2: for division is an extraordinary and subsidiary remedy, as the Rota teaches in the case of *Leodien*, February 1, 1412, before Falconieri. Therefore, the case of division, as contemplated by the law, is understood to be a very great distance of the place, unless it can be remedied in some other way; Rebuffus, *Practica beneficiorum*, part. 1, *de erect. in Curat. et Paroch.*, n. 1. Indeed...

[*Latin ed. p. 575*]

TURIN. 575. Fagnano reduces all the causes of division to a single one, namely, the great difficulty of accessing the mother Church; Bouix, in *De Parochiis, part. cap. 4, prop. i.*, and states that the opinion of Fagnano has its foundation in the Council of Trent, Session 11, chapter 4, concerning Reform, and in Chapter 3, *Ad Audientiam*, concerning the building of churches, to which the Council of Trent refers. From these, he concludes that, in order for division to be considered necessary, it must be proven that it is impossible to attend the parochial church without great inconvenience. Furthermore, descending from the law to the facts, he argues that division is not necessary in this case for several reasons, and especially because of the difficulty of the distance; which is such that it can be overcome in a journey of a third of an hour. Moreover, this distance, the defender argues, is not that which the Council of Trent requires for division. Indeed, if we consider either the location or the region, in which there are many suburbs that are one hour's journey from the parishes, or the quality of the parishioners, who are dedicated to the cultivation of fields and livestock, then, according to Cardinal De Luca in *Annotationes Concilii Tridentini, disc. 16, num. 2*, it should not be considered a case for division. Therefore, he concludes with Rota, that a new priest should not be presented, nor a new church erected, according to Decree 146, n. 2, before Motines. Nor is a new parish necessary because of the difficulty of the roads, since wide roads, suitable even for carriages, lead the inhabitants of the locality of Vallongo to the parish of Cornaleno, as testified by many. Furthermore, the defender continues, a new parish is not necessary because there is already more than sufficient provision for the spiritual well-being of the faithful, both in the parish of Cornaleno, where there is a parish priest and his coadjutor, and in other villages where chaplains are established for the benefit of the inhabitants. Furthermore, the needs of the parishioners of the locality of

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Vallongo are already provided for, in part, by a bequest from the will of the Reverend Father Philip Chicco, who, having left an annual income of 50 livres for a chapel of Saint Charles, also established other annual incomes for the celebration of Masses on each festive day and for the instruction of Christian doctrine.

[*Latin ed. p. 576*]

"576 TAURINEN. Finally, he attempts to refute the necessity of the division by citing a not insignificant number of parishioners: indeed, according to the testimony of neighboring parishes and the municipality, the parish has 680 parishioners. Proceeding to the second point of his defense, the Patron argues that, in this case, the utility cause, which is mentioned by the Council of Trent, and which the Holy Office always demands in any division, and from whose absence it often denies the division, is absent; as can be seen in the division and reintegration of Ancona on February 12, 1503, and in the division of Ascoli on January 14, 1804. This, he argues, is proven by the consent of the parishioners, who assert that the division would be in no way beneficial in this case. For, once carried out, the parish would be reduced to 299 souls; while the church could accommodate 1500 people. Therefore, if those who must remain at home to care for domestic affairs and livestock are subtracted from the small number that remains, the aforementioned church would, during the times of divine services, be almost empty. Furthermore, the defender observes that the appointment of a new parish priest in Vallon would cause no small damage to other parishes in the Diocese of Taurinensis, which, although frequented by a larger number of faithful, are nevertheless deprived of their own pastor, as testified by the Patron De-Maistre and the Archbishop. Proceeding further to the third point, the defender observes that the division would be entirely harmful, not only spiritually, but also materially: for the De-Maistre family, which provides for all the needs of the parishioners, would be deprived of this benefit, and would have to go to another parish. The division would also cause damage to the parish itself, through the loss of income from the rectory, as they say, and also to the mother church, which would be reduced to a lower status, since this one consists of 385 souls, while, on the contrary, the mother church would encompass only 299 souls. Moreover, he says that the division would be equally harmful to the parish of Casanova, since, once the town of Fraschero is separated,..."

[*Latin ed. p. 577*]

TURIN. 577 The parish church should not remain deserted, lacking worship and adornment, as if it were not to be maintained and assisted by the offerings of the faithful. Then, turning to the fourth point, the speaker of his defense, having stated what Cardinal De Luca states in Discourse 16 to the Annotations of the Council of Trent – there – "Sometimes, division

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[dismembratio] is not expedient, because frequent experience teaches that such a division of parishes often causes rifts and factional rivalries among the clergy and people of both parishes." He argues that division, in this case, should not be permitted as a cause of discord. Indeed, both the pastors and the landowners, and especially the workers of the village of Vallongo, openly state that a new parish will be a source of quarrels and disputes. Having brought this to the attention of those present, the speaker begins to reject the erection of a new parish due to its unpopularity. For when such causes are unpopular, anyone can take the part of the actor, as Pignatelli states in volume 5, section 2, page 229; Barbosa in the Council of Trent, chapter 6, page 53; and the Rota in the Umbrian Decrees of March 20, 1600. This unpopularity can also be demonstrated by the protests of the inhabitants, sent to the court after the decree of division. In addition to this, the defender adds that for a division to take place, the consent of the patron is required, through a bilateral agreement between the founder of the church and the Archbishop. Indeed, in this way, the pious founder undertakes the burden of building the church, endowing it, and maintaining it, so that the territory is assigned to the newly established parish, and the people are entrusted to him. Therefore, having established the manifest dissent of the patron, he says that it is wrong to withdraw from the agreement initially made, since "In named contracts, it is not permitted to repent, that is, to withdraw from the contract, without the consent of the other party" (L. S. 5 c. de action, et obligat.; Ferraris Ver. contract. n. 13; Codex Italic, n. 1123). Finally, in the last place, the speaker points out that division is harmful in this case with respect to the patron and the parishioners. For, he says, it is well known that religious piety... (the text is incomplete).

[*Latin ed. p. 578*]

578. TAURINEN. Moreover, concerning the most excellent Patron, who, adhering to the footsteps of his predecessors, diligently endeavors to provide all that is necessary for the inhabitants of Burgos, so that the ecclesiastical laws may be more easily fulfilled, and for their Christian education. He also states that this is likewise beneficial to the faithful of Burgos, who pursue with the greatest benevolence and zeal the most beneficent Patron, as the adduced documents testify. With these considerations presented on both sides, the purpose was to examine the question: Whether the places of Cornalense and Casanova are suitable for the division of parishes, and for the erection of a new parish in the place of Vallongo in this case.

RESOLUTION. After discussion by the Sacred Congregation, on March 16, 1883, it was decided to respond: Negatively.

(1) (1) Without repeating what has already been noted, and what concerns the division of parishes, it is sufficient to observe that the Most Reverend Fathers perhaps voted in favor of the negative opinion, and that the reasons for the canonical cause, which the Reverend Fathers present, add

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greatly to the difficulty of accessing the mother church. This difficulty was not proven in the matter; on the contrary, it is reported by several that the road is neither long nor the paths arduous that lead to the parish church. However, it is not to be doubted that the opposition of the noble Patron held great weight with the Most Reverend Fathers. The questions concerning the division of parishes that have been raised may be recalled. Vol. I, page 520 and 543; Vol. III, page 390, Appendix VI concerning the consent of the pastors and the people in the division of parishes; Vol. XI, 287; Vol. XIII, 60, 293, and 289, where Appendix VI concerning the power of the Ordinaries, and the jurisprudence concerning the division of parishes, is found.

[*Latin ed. p. 579*]

579. ADRIEN. MARRIAGE. On the 17th of March, 1883. SUMMARY OF THE CASE. Pacificus and Mary, both of the same city, having entered into betrothal in March of 1879, enjoyed three years of mutual affection. However, when Mary, in the year 1881, learned that Pacificus was suffering from a certain illness, and therefore understood that his parents would not readily consent to this marriage, on the 29th of December, she sent him a letter in which she declared her intention to withdraw from the betrothal; and she asserted that Pacificus, through a letter dated the 31st of the same month, had given his consent to this withdrawal. Nevertheless, it is established that Pacificus, upon learning that Mary intended to enter into a marriage with another, on the 3rd of February, 1882, petitioned the Curia, alleging an impediment to the betrothal, citing Mary's free state. The woman and her parents then protested, demanding the removal of the impediment, and the Episcopal Curia instituted a summary process; and upon its completion, on the 18th of August, 1882, the Curia informed Pacificus that his friend was free. The woman, not of Fratta, but of Aversa, appealed to the Sacred Congregation of the Council, protesting that the judgment of the Curia should be overturned; and if it were to remain in force, she earnestly implored that she be dispensed from the betrothal, for the following reasons: first, because she was ignorant of the fact that a private promise of marriage could give rise to a public impediment; because she is certain that Pacificus had consented to the dissolution of the betrothal; because he is not in good health, and therefore her parents are opposed to this marriage with all their power. The Bishop, transmitting the records of the process, implored the Apostolic See to grant Mary a dispensation from the fullness of its power.

[*Latin ed. p. 580*]

580. ADRIEN. hesitates regarding the bond of betrothal due to certain reasons. He added that, in truth, Pacificus does not enjoy perfect health, and that there is a danger that Mariam might be pressured into a marriage, which they call civil. Furthermore, a few days later, the Bishop recounted

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that the girl had been induced. The opinion of the court seems to be one that should be corrected. Several things suggest that the court's opinion should be corrected. First of all, it should be remembered that, although betrothals are directed towards the sacrament of marriage, they scarcely exceed the limits of a human agreement and contract, and therefore, just as other contracts can be dissolved, so too can these. Among the many reasons for which betrothals can be lawfully dissolved, the mutual consent of both parties is especially noteworthy (arg. cap. P, praeterea 2 de Sponsali). And rightly so, because if a contract is made by consent alone, it can be dissolved by contrary consent, since nothing is more natural than for something to be dissolved by the very means by which it was joined, as Ulpian says (L. Nihil 35 ff. de Reg. Iur.), to which the passage "Omnis res" (Every thing) in chapter 1 of the Institutes of Jurisprudence adds its agreement (in 6). Furthermore, the process records prudently demonstrate that such mutual consent existed in this case. For Mariam, having been legally summoned and prepared to swear an oath, affirmed it. Moreover, there is no doubt that Mariam's testimony was to be given, because the Bishop testified that she was endowed with good morals. In addition, the testimony of Natalina, her sister, and Santina Cripaldi, a servant, who were heard as witnesses by Mariam in a legal proceeding, was also presented. Natalina affirmed that written letters existed, in which she declared her consent to the dissolution of the betrothal, and that now she does not know the reason why they are torn. She testified that she could confirm these depositions under oath. Therefore, since the testimonies of these witnesses appear to be trustworthy and consistent, it can rightly be argued that Pacificus has indeed withdrawn from the bond of betrothal.

[*Latin ed. p. 581*]

ADRIEN. 581. Nor could such testimonies be rejected, namely those of relatives and servants, who are to be held in no small regard. It must be noted that relatives, animals, and servants may be admitted as witnesses, when a fact cannot be proven otherwise, chapter V concerning Witnesses, chapter Venerable concerning Witnesses to be examined, L. 8 of the Code concerning Annulments. This is clearly verified in the matter at hand, since no other witness, besides those presented, is available. Furthermore, it is noteworthy that Pacificus, scarcely a month after sending those letters to Maria, presented an impediment to the marriage before the Church. This contradiction could be best explained by the fact that Pacificus, repenting of his actions, was angered, seeing that Maria had immediately contracted a marriage with another man, and was about to begin the marriage, which the Prelate himself confirmed. And if this mutual consent does not appear sufficiently evident, it seems that the marriage has lost its force from another aspect. Indeed, according to the common opinion of Doctors, a serious bodily infirmity contracted by either of the betrothed after the com-

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mencement of the betrothal, provides grounds for the other to withdraw from it, chapter 25 concerning Oaths. For no one would willingly enter into marriage with a person suffering from such a serious illness, Sánchez, book i concerning Marriage, D. 57, n. 1. And if this infirmity had existed from the beginning, or had been known to the other party, he would certainly have abstained from the promise of marriage. But that Pacificus suffers from a serious illness is primarily derived from the testimony of Maria. In her favor, the Canon N. also testified, who was present with Pacificus while he was ill, the Physician who treated him, and the Pharmacist who provided the medicines. From these testimonies, it is gathered that Pacificus suffers from a serious illness, and that this illness could bring about the death of the marriage bond. Therefore, there is a just cause for Maria to withdraw from the betrothal. This seems to be admitted with even greater justification, since Maria learned that several members of Pacificus's family were suffering from consumption and had died. For it is certain from the testimony of the Parish Priest that his father and two brothers...

[*Latin ed. p. 582*]

582. ADRIEN. This young man passed away from this illness. Therefore, when Mary learned that Pacificus was, in December of 1881, in such a state of health that he could not enter into marriage, and furthermore, that there was at least a strong suspicion, if not certainty, that he was suffering from consumption, she appears to have rightly used her right to dissolve the marriage contract; and therefore, it appears that the judgment of the court should be overturned. However, even if the Episcopal judgment maintains its force, a dispensation from the marriage, for several reasons, seems to be warranted. And first, because of the dissent of the parents, who would never allow their daughter to marry Pacificus. Mary, before the judge, stated that another reason for her withdrawal from the betrothal was the vehement opposition of her parents. The dissent of the parents of the betrothed, it is commonly taught by the Doctors, provides a reasonable cause for granting a dispensation from the marriage. To this is added, on the one hand, Mary's deliberate and firm will to enter into marriage with another, so that reconciliation with Pacificus is almost impossible. On the other hand, Pacificus, rather than considering or trusting in the future marriage, is moved by a spirit of revenge and opposes Mary's marriage to another man, as the Bishop states. Therefore, since marriages must be free, so that unhappy consequences do not follow, any coercion should be avoided. Furthermore, the causes for excluding coercion in marriage are of great importance, as taught by the Doctors and by the Roman Rota; as can be seen, in addition to many other reasons, in Amerina, in the Sponsals of February 1841, § 6, before Quaglia – there, «On the other hand, quite valid reasons were presented by the orators, for which they are reluctant to enter into marriage.» There occurred a separation of minds that arose before the

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beginning of the lawsuit, and which is exacerbated by this lawsuit; there occurred the disapproval of the parents, and especially of Vincent's mother, of these marriages; and finally, it occurred that Vincent had attached himself to another woman, and had entered into marriage with her.

[*Latin ed. p. 583*]

ADRIEN. 583 >• having prepared [the grounds], which, indeed, individually are sufficient to exclude coercion, as the Rota observes. Furthermore, the authority of the Sacred Congregation is present, which, certainly considering how difficult it is for censures to lead to coercion in marriage, has often granted dispensations in many cases, to remove greater evils. Examples are found in the Pistorian Decrees on dispensations of June 7, 1856, the Bisinian Decrees on the dissolution of betrothals of September 19, 1841, and especially in the Decrees of Nullius of May 29, 1852, among the petitions presented by the suppliants. Indeed, if a dispensation is commonly granted even in cases of serious disagreements arising between betrothed parties, even after a valid marriage, it seems all the more fitting to grant it in this case. Finally, when Mary, having been enticed by perverse persuasions, has already entered into a civil marriage with another man, no other means remains to ensure their eternal salvation, than to dissolve the prior betrothals and to enter into the matrimonial bond before the Church. THE OPINION OF THE COURT APPEARS TO BE CONFIRMED. But, on the contrary, Pacificus maintains that the initial betrothals should remain in force, and that no reason for a dispensation exists. And indeed, although certain canons state that a betrothal can be dissolved with the mutual consent of the parties, such consent does not seem to have been present in this case. For Pacificus absolutely denies having written the alleged letters to Mary; and he endeavored to prove this with the testimonies of three witnesses. Since, in every case, two suitable witnesses are sufficient for legitimate proof, unless otherwise stipulated, according to chapter 4 on Witnesses - there - "Let every word stand as it is in the mouth of two or three witnesses," chapter 23 of the same - there - "If three witnesses are present in a cause, question 2 and 3, and, in this case, three suitable witnesses have stated in unison that Pacificus steadfastly refused Mary's petition, their testimonies appear to provide full proof. The arguments presented to the contrary are of little weight. In the first place, Mary's testimony must be rejected, since...

[*Latin ed. p. 584*]

S84 ADRIEN. Can testify in his own cause. L. Nullus 10 ff. de Testibus, L. Omnibus 10 Codic. ibid. - ibid. - "All are granted by law the right to give testimony in their own affairs." Cap. Si testes 3 caus. 4 qu. 2 et 3. The testimony of Natalina, Mary's sister, should also be set aside, because, according to the common opinion of the Doctors of the Church, those who are

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blood relatives of the one who presents them as witnesses against outsiders are not considered suitable witnesses. For they are considered too suspect on account of the natural affection they have for their blood relatives and affine. L. Testium fides 8 ff. de testibus, cap. Si testes 3 caus. 4 quaest. 2 cap. Consanguinei 1, cap. Accusatores 2, and cap. Suspectus 4 caus. 3 qu. "5 cap. Absens per alium 18 caus. 3 qu. 9. Finally, Cripaldi himself must be kept away from the very threshold of the court, since the servant of the one presenting him is not a suitable witness. L. 3 Cod* de testibus - ibid. - "Even by civil law, the testimony of domestic servants is deemed unreliable," which is consistent with cap. Si testes 3 caus. 3 qu. 2, where the same words are quoted. L. Testes 24 ff. De Testibus. From these things, it seems evident that Mary's assertion regarding the consent obtained from Pacificus lacks any foundation. It should also be noted that it cannot be admitted that Mary, if she truly received letters, concealed the document by which any obstacle to the fulfillment of her desired vows was removed. Therefore, since it is incumbent upon Mary to clearly demonstrate such a fact, and since she has failed to do so, she must, justly and rightfully, be denied. Moreover, she may find a stronger defense in the asserted infirmity of Pacificus, so that she may not be held to her given word. For Pacificus has shown that he is not suffering from any illness, by the declaration of several witnesses, and especially of two doctors. These declarations of experts seem to sufficiently demonstrate that Pacificus is suffering from phthisis. As for the depositions of the Canon, it must be noted that, firstly, they contradict the assertion of the doctor, Polo. Furthermore, Anthony Ansaldi testifies that at the beginning of the year 1881, he repeatedly inquired of the Canon regarding Pacificus' health, and that the Canon...

[*Latin ed. p. 585*]

ADRIEN. [He] had received a judgment which held that Pacificus was not afflicted by any illness. Indeed, it is certain that one witness, whatever his dignity, is not sufficient for legitimate proof, so that no judicial controversy can be concluded by the testimony of a single person, however legitimate; this is expressly stated both in divine law, Deuteronomy, chapter 15, verse 17, and in canon law, Canons Admonere, cause 22, question 2, chapter Veniens 10, chapter Licet 23, and chapter Cum a nobis. Concerning witnesses; and finally, in civil law, L. Iurisiurandi 9, Code Concerning Witnesses: hence the common saying, "one [witness], nothing." Therefore, since Mary affirms Pacificus' infirmity through a single witness, it necessarily follows that this is legally of no consequence. The reasons for granting a dispensation, or they appear to be lacking, or not so grave, that Pacificus should be legally deprived of the right to enter into marriage with Mary. The consent of the parents is not absolutely necessary in the marriages of children: and in the present controversy, this appears unreasonable. For as soon as someone reaches the age of puberty, he is no

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longer under the power of another, if he is of free condition, with regard to those things which concern his person, and indeed, even against the will of his parents, he is able to enter into marriage or embrace religion. This freedom of children was solemnly confirmed by the Council of Trent, chapter 1, session 24, concerning the reform of marriages. And the Holy See has granted the faculty to enter into marriage even if the mother, and other relatives, are reluctant, as can be seen in Florence, January 12, 1726, and in Melevita, March 20, 1880 (1). Such parental dissent appears unreasonable, since Pacificus is of honorable condition, and no disgrace could arise to the family of Mary from this marriage, and therefore their opposition should be disregarded. Nor can a stronger reason be drawn from Mary's reluctance: since the obligation arising from the betrothal is grave, St. Thomas, in the 4th distinct, 27th question, 2nd article, Covar, part 1, Concerning Betrothals (1). [Note] Recall this question, Volume XIII, page 440.

[*Latin ed. p. 586*]

Adrian, chapter 4, paragraph 2; Sánchez, book 1, On Matrimony, discussion 27, number 2; Layman, book 5, treatise, part 1, chapter 1, number 3; therefore, neither party has the power to retract from the given faith. Since, therefore, the existence of the marriage cannot be called into doubt, and no reasonable cause exists to dissolve it, it seems evident that Mary, to whom Pacifico gave his faith through marriage, must be freed from that faith, and that she may even be compelled to achieve this through legal means. However, since she, having scorned the authority of the Church, lives in a legal concubinage with another man, she is rather unworthy of obtaining a dispensation of grace. For she has not, as she ought, conformed herself to the laws of the Church, but rather, she has preferred to serve the Church by force, as it were. Since, in granting dispensations, the sayings from the Holy Canons must be kept in mind, namely that no indulgence should be given to the wickedness of men, and that no one should profit from his own wickedness, it spontaneously follows that the requested dispensation should not be granted. Therefore, having considered these things on both sides, the following points were presented to the Most Eminent and Reverend Fathers for judgment: Question 1: Whether the judgment of the Episcopal Court of Adrian should be confirmed or rejected in this case. And, as to the affirmative regarding the first part, and the negative regarding the second. Question 2: Whether the Most Holy [Congregation] should be consulted regarding the dispensation in this case.

RESOLUTION. The Holy Congregation, after deliberation, decided on March 17, 1883, to respond as follows: To Question 1: Provision will be made in the second [part].

[*Latin ed. p. 587*]

ADRIEN. 587 Ad II. Affirmative, provided that a prior separation has

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been approved by the Ordinary for a period of time, and a salutary penance has been imposed. (1) (1) *Recueil* Vol. I, X, page 124; where another question regarding the dissolution of betrothals is related. Compare Vol. X, 185 and 195 in the notes. There, we observe that the Sacred Congregation often requests from the Holy Father a dispensation from betrothals, concerning whose validity there is doubt; even though the same betrothals appear to fulfill all the requirements by which they could be declared valid. The Church, in these cases, prefers to tolerate the transgressor, rather than to compel him by strict coercion to enter into marriage; perceiving that such coercion does not serve to end the bond. It is fitting for the Church to permit the lesser evil, in order to avoid a greater one: a greater evil is the arising of scandals and perpetual enmities, than to break the faith of betrothals. In this matter, everyone can see the evils that were already looming over the imprudent Mary, had the Pope not granted a dispensation from the betrothal. For she was already being bound by a civil bond to another man; who could legally bring her before the courts to compel her to live with him in a state of concubinage.

GALLIARUM. DECRETUM, by which Saint Vincent de Paul is established as the patron of all charitable societies that exist in France and which originated from him. The illustrious Saint Vincent de Paul, a shining example of works of mercy and charity towards the poor, is widely praised as a leader. Providence has granted Saint Vincent de Paul, who accomplished all things through beneficence, a Christian distinction, and has given him to all, and especially to the Priests whom he instructed.

[*Latin ed. p. 588*]

588 The decree of the Congregation for Missionaries has caused the spirit of those who cherish young girls to be called its heirs. To these have joined laypersons, who, moved by the same love of beneficence, have eagerly undertaken works for the poor and the sick, providing assistance to Vincent, both spiritual and corporal, with extraordinary zeal and charity, sparing neither effort nor expense; such societies are commonly called Conferences. This movement, which arose in Paris in the year 1833, has wonderfully spread throughout the entire world, wherever Catholics are found, and has produced abundant and salutary fruits. Therefore, the members of this society, who are now celebrating the fiftieth anniversary of its foundation, have also expressed their desire that Saint Vincent, whom they already regard as their master and protector, be recognized and established by the authority of the Apostolic See. Joining their voices to these, the prelates of the dioceses of Gallia urged His Holiness, Pope Leo XIII, to grant this favor to such societies. His Holiness, referring to the written request of the Secretary of the Congregation of Sacred Rites, and most graciously receiving these prayers and petitions, has declared and established Saint Vincent of Paul as the patron of all charitable societies, as mentioned above, that operate in

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the territory of Gallia, and has ordered that Apostolic Letters be issued in this matter in the form of a Brief. April 26, 1883. D. CARD. BARTOLINIUS, Prefect. Laurentius Salvati, Secretary of the Sacred Congregation. Decree concerning the Beatification and Canonization of the Venerable Servant of God, Sister Joseph Maria of Saint Agnes, commonly known as Ines de Beniganim, a religious professed of the Order of Discalced Carmelites of Saint Augustine. Whereas, on the 8th of last past March, it was granted by His Holiness, Pope Leo XIII, that an ordinary process be held in the Congregation of Sacred Rites, without intervention...

[*Latin ed. p. 589*]

DECREE and the opinion of the Consultors, 589, concerning the validity of the process instituted by Apostolic authority in the ecclesiastical court of Valencia, regarding the miracles wrought through the intercession of the aforementioned Saint Agnes, the Holy Sister Joseph of Mary, as it is reported, by God; We, and the Most Reverend Lord Cardinal Lucidus, to the same Venerable Parish Priest, in place of the Congregation and in the stead of the undersigned Prefect, the Cardinal presiding over this cause, at the urgent request of the Most Reverend Lord Sylvester Rongier y Fullera, Bishop of Urbano and Rector of the Royal Church of Santa Maria of Montis Serrati in Spain, the Postulator of this cause, in a special assembly of the aforementioned Holy Congregation, according to the particular dispositions of the Most Holy Lord, held on the 20th of November, and signed on that same day, convened at the Vatican, proposed the following question: Namely, "Does it appear that the process instituted by Apostolic authority in the City and Diocese of Valencia, concerning the Miracles, was conducted validly? Were the witnesses examined properly and correctly? And were the testimonies legitimately produced, in the case and for the purpose in question?" Furthermore, the Holy Congregation, after a thorough examination, and having heard the voice and written opinion of the Reverend Father Doctor Augustine Caprara, Promoter of the Holy Faith, declared: "Affirmative." On the 5th of June, 1883. These matters were then faithfully reported to the Most Holy Lord Pope Leo XIII by the undersigned Secretary, and His Holiness approved and confirmed the sentence of the Holy Congregation on the 14th of the same month and year. D. CARDINAL BARTOLINIUS. R. E. PREFECT. In place of the Seal. LAURENTIUS SALVATIS. R. C. SECRETARY. DECREE OF THE ROYAL COLLEGE. Concerning the Beatification and Canonization of the Venerable Servant of God, Father Jesualdo of Ragio, a Professed Priest of the Order of the Minor Friars of Saint Francis, Capuchins. Whereas, at the request of the Reverend Father, Father Amedeo of Urbeveteri, a Professed Priest, and General Postulator of

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Causes of Beatification.

[*Latin ed. p. 590*]

590 DECREE concerning the beatification and canonization of the Servants of God, members of the Order of the Lesser Brothers of Saint Francis of Assisi, the Most Holy Pope Leo XIII, on the 23rd of June in the year 1881, had already benignly granted permission that, concerning the life, virtues, and miracles of the aforementioned Venerable Servant of God, Father [name obscured], investigations could proceed in the Ordinary Congregation of the Sacred Rites, without the intervention or vote of the Consultors; The Most Eminent and Reverend Cardinal Thomas Maria Martinelli, in place of and in the stead of the Most Eminent Cardinal [name obscured], Promoter of this Cause, proposed the following question for discussion at the Ordinary Congregations of the Sacred Rites, held on the designated day at the Vatican: "Concerning the validity and relevance of the Apostolic Process concerning the life, virtues, and miracles, of which we are speaking, does it hold?" The Reverend Fathers, after mature deliberation for the sake of God, considered it necessary to write to the Most Holy Father, Augustine, and to supplicate that the Venerable [name obscured] be examined in the Sessions of the Congregation for the Causes of Saints, and that the Most Eminent and Reverend Fathers, Prefects of the Sacred Rites, with all voices affirmative, both orally and in writing, would grant the requested sanction, after which, in the first of the prior Sessions, on the 9th of May, 1883, it was declared to be established. These matters, faithfully reported to the Most Holy Pope Leo XIII by the undersigned Secretary, were ratified and confirmed by His Holiness, and the requested sanction was benignly granted on the 10th of the same month and year.

S. C. D. CARD. BARTOLINIUS

R. PRAEF.

Loco gg
Sigilli

LAURENTIUS SALVATI

S. R. C.
Secretarius.

[*Latin ed. p. 591*]

59* APPENDIX VIII, wherein are collected, for the benefit of history, certain Letters concerning ecclesiastical matters, namely, a Letter from Pope Leo XIII to the Emperor of Germany, and his replies. Letter from William

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Emperor to Leo XIII, Pope in Rome. "I thank Your Holiness for the letter which you addressed to me on the 3rd of this month, and with all my heart, I reciprocate the sincere benevolence which you show me. This letter confirms me in the conviction that Your Holiness feels satisfied with me regarding the restoration and the exercise of my legation at the Vatican, and provides a new motive for corresponding with equal diligence to the steps taken by my government, which have made possible the occupation of the majority of episcopal sees. I am of the opinion that such a rapprochement, if it were to take place in the matter of the designation of ecclesiastical appointments, would be more advantageous for the Church than for the State, because it would offer the possibility of providing for vacancies occurring in ecclesiastical benefices." William Emperor to Leo XIII, Pope in Rome. Berlin, 22 December 1882. "I hope, Literae ecclesiastici. Berlin, 1st of January of the year 1883. It is pleasing to me, Your Holiness, for the letters which you sent to me on the 3rd of December. And with a willing heart, I reciprocate your sincere benevolence towards me. These letters confirm me in the best hope that, with the pleasure with which we are both affected by the restored legation of mine at the Vatican, you will receive a new incentive to respond with equal diligence to those things which have been accomplished under my rule, by which it has been made possible that almost all the seats of Bishops have been easily occupied by Catholics. Indeed, I believe that this alliance of friendship, recently established between us, if it were to take place in the designation of those who are to be appointed to ecclesiastical offices, would be more useful to the Church than to the Empire: because, with this alliance established, the possibility would be created of providing for vacancies in ecclesiastical benefices."

[*Latin ed. p. 592*]

592 "If, following a discussion with members of the clergy on this matter, I could be convinced that the pursuit of reconciliation was indeed mutual, I would gladly endeavor to have those laws, which during a period of my reign were useful in defending the contested rights of the State, subjected to a new examination by the Parliament, so that they would not, therefore, be permanently necessary in times of peaceful relations. I gladly seize this opportunity to once again assure Your Holiness of my personal devotion and veneration. Signed.

"Countersigned,

WILLIAM DE LEONE, Pope XIII.

To Your Imperial and Royal Majesty,

William I, Emperor of Germany, King of Prussia.

"Should I, by some means, be able to persuade myself, through discussions with members of the clergy on this matter, that the concern for the

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restoration of mutual harmony is truly reciprocal, I would gladly strive to have those laws, which, indeed, were useful in defending the rights of the Empire during a period of intense discord, subjected to a renewed review by the highest council of my dominion, which is responsible for enacting laws, so that they may not, in times of friendship and mutual intercourse, be deemed permanently necessary. I seize this opportune occasion to reaffirm, once again, my obedience and reverence towards you.

From William Bismarck,

To His Imperial and Royal Majesty,

William I, Emperor of Germany, King of Prussia.

"Recently, at the Imperial and Royal Prussian Assembly, commonly called the Landtag, Your Majesty has been pleased to manifest to your people the joy that Your Majesty feels in the strengthening of the bonds of friendship with the Head of the Catholic Church, through the restoration of diplomatic relations."

[*Latin ed. p. 593*]

APPENDIX VIII, so courteous to Us, 593. The manifestation of your sentiments, O Emperor, has been most pleasing to Us, and compels Us to offer you, with the utmost sincerity, the most heartfelt thanks. We have, from the very beginning of Our Pontificate, placed our hopes in the generous sentiments of Your Majesty, hoping to see the tranquility of consciences and the peace of religion restored to the Catholic people, and that those who serve Your Majesty would be obedient to the powerful scepter: and now, indeed, the relations of mutual interest that have arisen between Us, and the recent events that have occurred, have so strengthened Our confidence that We are certain that Your Majesty will strive with all diligence to achieve such a noble and beneficial goal. Furthermore, We have received with great pleasure the news of...

Your Majesty, with Your profound wisdom and long experience, understands how great is the need to guide the people, through the observance of religious duties, to fulfill those obligations that are incumbent upon them, both as citizens and as subjects, especially now that the very foundations of human society seem to be shaken. We can assure Your Majesty that the Catholic Church is fully imbued with this spirit, and that, where it does not encounter obstacles, it possesses the precious power to instill and spread this spirit everywhere. It has always been Our desire... Tom. XV. CL1XX. Your Majesty, indeed, possesses exceptional wisdom and experience, and rightly knows what is fitting and proper to do in order to lead the people, through the observance of religious duties, to fulfill those things that they ought to do, whether as citizens or as subjects, especially at this time when the very foundations of human society seem to be shaken. We can certainly assure Your Majesty that the Catholic Church is fully imbued with this

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spirit, and possesses the remarkable power to instill this very spirit.

[*Latin ed. p. 594*]

APPENDIX VIII. 591. With ardent desire, We see the Church freely exercising its influence wherever it may be advantageous to the people and to governments, and establishing bonds of friendship and peace with them. If, however, the weighty duties of the Apostolic Ministry, filled with responsibilities before God and men, compel us to request that the new ecclesiastical legislation in Prussia, at least in those points essential for the existence and life of the Catholic religion, be definitively softened and corrected, Your Majesty will not attribute to us a lack of good and conciliatory intentions, but rather will recognize that We make this request in the very interest of peace, which, if it is to be true and lasting, must be established upon a firm foundation. This reconciliation of minds, while satisfying one of the most ardent desires of Our heart, will bind with stronger ties to the throne of Your Majesty the souls of all Your Catholic subjects, and will, if not hindered by obstacles, spread and be disseminated throughout the world. Therefore, it has always been Our fervent wish that the Catholic Church may freely exercise its virtue among the people and governments, and may enter into covenants of friendship and peace with them. If, for the sake of our duties, which the Apostolic office imposes upon us, and with which We are bound by a sacred obligation before God and men, We are compelled to request that the new legislation in Borussia (as far as it pertains to the Church) be tempered and corrected, at least in those matters which are of the utmost importance and which the very nature and life of the Catholic religion demand, let Your Majesty not attribute this to a suspicious intention on Our part, as if We were averse to reconciliation; but rather, let Your Majesty recognize that We make this request for the very sake of peace, which cannot be true or lasting unless it is established upon a sufficiently firm foundation. Thus, this mutual reconciliation of minds and the ardent desires of Our heart will be fully satisfied, and the souls of all Your Catholic subjects will be bound with stronger ties to the most illustrious throne of Your Majesty, and finally, this will be the brightest of all.

[*Latin ed. p. 595*]

595 APPENDIX VIII. and most precious, long-glorious crown of the long-glorious that Kingdom. Certainly, it shall be perfected." With this hope, We, raising up our voices, make fervent prayers for the prosperity of Your Majesty, Your family, and Your Imperial Royal House to God. Given in the Vatican, the 3rd of December, in the year 1882. To Your Imperial Royal Majesty, William I, Emperor of Germany and King of Prussia. From Pope Leo XIII. Your Majesty, The Royal letter which Your Imperial Majesty sent to Us last December, through the hands of Mr. Schlözer, Extraordinary En-

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voy and Plenipotentiary Minister of Prussia to the Holy See, has confirmed in Us the hope, long cherished, of seeing the religious controversies in the Kingdom of Prussia resolved with complete accord. The august words of Your Majesty, which show that Your Majesty is disposed to lend a hand towards a revision of the current ecclesiastical legislation, lead Us to foresee the conclusion of this agreement not far off. For this favorable disposition, We declare Ourselves grateful and pleased with Your Majesty. William I, Emperor of Germany and King of Prussia. Leo XIII, Pope. The letters which Your Imperial Majesty sent to Us through Mr. Schlözer, Extraordinary Envoy, with full powers at the Holy See, have confirmed in Us the hope, long conceived, that all religious controversies in the Prussian Kingdom will be resolved by complete agreement. The words of Your Majesty, in which Your Majesty affirmed that she is prepared to undertake a revision of the present ecclesiastical legislation, lead Us to hope that such an agreement will be concluded as soon as possible: For this excellent intention and counsel of Your Majesty, We give thanks to Your Majesty with the greatest gratitude, and We testify that We are deeply pleased.

[*Latin ed. p. 596*]

596 APPENDIX VIII. For the sake of this matter, I have instructed My Secretary of State to write to Cardinal Mus, and I have sent to him, through My secretariate, the Cardinal of our entire jurisdiction, so that he may note, as D. Schlözer has already done, that We believe that the public letters which We have already received and read from the most illustrious administrators of Your Majesty's government concerning this matter have been brought to Your Majesty's attention. We have, therefore, wished to reiterate in these letters Our will, so that Our firm will, already manifested to the most excellent Government of Your Majesty, to Your Majesty's magistrates and to Your Majesty's councilors, may be again confirmed: namely, that a notification be sent to the bishops concerning the parsonages, and that those who are to be appointed to ecclesiastical duties be notified, so that We may come as close as possible to the views and desires of Your Majesty, and in order that We may be as close as possible to Your Majesty's intentions, We have also made known Our intention to provide for the parishes currently vacant without awaiting the complete revision of the laws currently in force, which We remember, and to notify the parishes, so that they may not await the aforementioned notification of the men to be appointed. To this end, We have acted.

However, We have also requested that, at the same time, the measures which now restrict the exercise of the ecclesiastical ministry, the instruction and education of the clergy, be modified, since We believe that such modifications are indispensable for the life of the Catholic Church. Moreover, at the same time, We have insisted that the laws and statutes by which the exercise of ecclesiastical authority and the ministry, the instruction and

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education of the clergy are hindered, be appropriately amended; for We consider this to be absolutely necessary for the very life of the Catholic Church. Indeed, it is necessary that the bishops have the power to instruct sacred ministers.

[*Latin ed. p. 597*]

[x VIII. And furthermore, they ought to instruct and guide these [clergy] with their own care and authority, according to the demands of the Church; and the Bishops ought to exercise vigilance and provide instruction, informing the sacred ministers in conformity with the teachings and the spirit of the same Church, as the State itself could not require of its own officials. For this is an essential element of a life of piety and a just freedom in the exercise of their duties. It would be in vain to appoint new incumbents to the Parishes if these, upon becoming priests, were hindered in the fulfillment of their duties. Therefore, we earnestly pray that Your Majesty may receive again, and with good will, the repeatedly presented and debated petition, concerning which the true purpose of our request is entirely necessary. Meanwhile, we, your most humble servants, imploring the favor of Your Imperial and Royal Family, manifest our desire that, with the same good will, Your Majesty may receive the repeated expressions of our sentiments, which are conducive to the prosperity of the Vatican, the prosperity of all our families, and the establishment of a stable and lasting peace, which, with the good will of both parties, will be most easily achieved. We do not cease to strive for the full expression of our fervent desires for the good of our communities. We also desire that those appointed to the pastoral care of our communities be able to fulfill their duties without hindrance. In the meantime, the freedom of the Ministry, as it is, will be necessary, for it is incumbent upon the administrators of the Kingdom, who are animated by authority and prudence, to act in conformity with the laws of the Empire, and to be worthy of the favor of God.

From the Vatican, the twenty-first day of January, in the year 1883.

[*Latin ed. p. 598*]

598 APPENDIX VIII. To the Most Reverend and Most Eminent Envoy and Plenipotentiary to the Holy See. January 19, 1883. The reply sent by His Most Catholic Majesty, the Emperor of Germany, to the Holy Father, on the 22nd of the past December, was received with sentiments of special appreciation and joy, because it gives hope; it not only manifests anew the conciliatory and benevolent dispositions of his Government, but His Most Catholic Majesty also takes a further step towards concord. The greatest difficulty that opposes this is the Prussian legislation, in points which are in contradiction with the divine constitution of the Catholic Church. Now, since His Most Catholic Majesty has declared that he could be pleased if

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his cooperation were given, because the public legislative bodies would again consider these laws, so that it might be permitted to notify the appointments of ecclesiastical persons, it must at least be recognized that a rapprochement has been produced between the desires of the Holy See and the views of the Government of Berlin.

Public Letters. From His Eminence, Cardinal Jacobini, Secretary to the Holy See for foreign affairs, to the Most Reverend Herr Schlözer, Extraordinary Envoy of Borussia, and Orator with ample and free powers at the Holy See. Given on the 14th of the month before February, in the year of Our Lord 1883.

From His Eminence. The reply from the Most Magnificent Emperor of Germany to the Roman Pontiff, given by letter on the 11th of January last, was received with sentiments of profound joy and festive hope: for by these words, not only is the deeply benevolent spirit of the aforementioned Emperor and of the public administrators of his realm again confirmed, and their eagerness to pursue reconciliation, but also a certain new step seems to have been made towards establishing an agreement. What most of all opposes this reconciliation are the laws of the Prussian Empire, which are contrary to the divine institutions of the Catholic Church. Now, indeed, since the Most Magnificent Emperor has graciously responded that he will take care that the public assemblies of the Empire, constituted for the enactment of laws, will again consider these same laws, provided that it may be permitted to present to either the aforementioned Emperor, or to the Bishops, the names of those to whom ecclesiastical duties are to be entrusted, it is sufficiently evident that the intentions of the Prussian Empire are approaching the wishes of the Most Holy Father, and that they have already begun to agree in a certain friendship.

[*Latin ed. p. 599*]

APPENDIX VIII. The Holy Father's letter (1) to the Most Reverend Archbishop of KolÃn had already expressed his willingness to allow the aforementioned notification to be presented, when the legislative measures concerning the Church would be brought to completion, and the necessary reforms enacted. Now, however, desiring to demonstrate in what esteem he holds the peaceful declarations contained in the Imperial letter, and wishing to hasten the removal of the causes of discord, even before the complete examination of all the provisions prejudicial to the Church, he is prepared to consent that, for the present, this be limited to only a few points; and that the granting of the notification proceed in step with the revision of the laws. He has therefore ordered the undersigned Cardinal Secretary of State to declare that instructions will be given to the Bishops to provide to the Government the names of all the new incumbents of the parishes now vacant, who must be invested with their canonical institution, when, after legislative proposals have been made to guarantee the effective exer-

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cise of ecclesiastical jurisdiction, as well as the freedom of education and instruction of the clergy, those legislative bodies shall have manifested their adherence. The notification, which for the present is mentioned in the sufficiently well-known letter addressed to the Archbishop of Coloniensem, already showed his intention of allowing the presentation of a list of those appointed to ecclesiastical offices, when those who are convened to enact laws concerning the Church would have enacted those laws pertaining to the Church, which are fitting. Now, moreover, the same Holy Father, in order to show how much he values the plans for peace contained in the Imperial letter, and because he desires that the causes of discord be removed more quickly, even before the examination of all those laws which are contrary to the Catholic Church is completed, he is prepared to consent that, in the meantime, the examination of such laws be carried out only with respect to a few of the most important ones; and that the granting of the notification concerning the presentation of the names of those who are to be appointed to the parishes now vacant proceed in step with the revision of those laws, and be valid. Therefore, the undersigned Cardinal Secretary of State has been ordered to inform the Bishops, and to give them appropriate instructions to carry out the presentation of the names of those ecclesiastical persons who are to be appointed to parochial duties, so that, according to the prescriptions and statutes of the Holy Canons, they may actually assume possession of their respective offices, when, after legislative proposals have been made in the public assembly of the Orators, concerning laws that will guarantee the complete exercise of ecclesiastical authority, and the freedom of instruction and education of the clergy.

(1) Reported in the aforementioned letter, Vol. XII, page 481.

[*Latin ed. p. 600*]

600 APPENDIX VIII. would be temporary, limited to the case of current vacancies, but will acquire a stable character in the future, in ways to be determined by mutual agreement, as soon as the Laws are revised. The Holy Father, deeply grateful to His Majesty for the sentiments of reconciliation that he has expressed, is persuaded that His Majesty will welcome this proposed arrangement as a new demonstration of that spirit of friendship and moderation with which he has animated all his actions towards the German Empire since the beginning of his pontificate; and that the Government of His Majesty, joining with the generous intentions of the Holy See, will walk with him, step by step and decisively, towards the same desired goal of concord. The Holy Father is firmly convinced that this concord will be fruitful in great benefits, more vital for the interests of the Church and the State, and will bind the Catholic populations with ever more inviolable bonds of loyalty to the Throne of their Sovereign. The undersigned Cardinal has the honor of informing Your Excellency that, for these matters to be confirmed, the aforementioned Orators, and the Administrators of the

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public affairs, must agree and stipulate. Furthermore, this publication and presentation of the names of the ecclesiastical candidates, which for the moment is temporary, and defined only by the present number of vacant parishes, will be permanent in the future, to be established and regulated by mutual consent, after the revision of the laws, which we mentioned. The Holy Father, offering great thanks to His Imperial Majesty, for having shown a willingness to pursue mutual reconciliation, is confident that His Majesty, favorably receiving the proposal of the Roman Pontiff, will welcome it as a new testimony of his equal and benevolent spirit, with which he has consistently acted towards the German Empire since the beginning of his pontificate; and that the administrators of the public affairs of His Majesty, after consultations and deliberations with the Roman Pontiff, will be willing to proceed with equal zeal towards the achievement of this desired reconciliation. The Holy Father is entirely persuaded that this agreement will be of great benefit, both to the Catholic Church and to the Empire itself, in matters that are more closely related to the nature and life of both, and that it will bind the Catholic peoples with stronger bonds of loyalty to their Sovereign. The undersigned Cardinal has considered it an honor to inform Your Excellency of these matters.

[*Latin ed. p. 601*]

APPENDIX because he wishes to bring it to the attention of his Government, and to inform and duly consider the matter, from the most distinguished CARDINAL JACOBINI. L. The public letters of D. Schlözer to Cardinal L. Jacobini concerning the entire Pontifical territory, from secret matters to external affairs. From Rome, March. Rome, March [year] 1883. Most Eminent Cardinal, Rumors are circulating which cast the Kingdom of Prussia in a false light, and which could easily disturb the good relations between the Kingdom and the Holy See. I consider it my duty to refute these rumors and to explain the true state of affairs, in the interest of the existing agreement between Prussia and the Roman Curia. "Among these rumors, I consider particularly important the assertion, spread by certain persons, that the Kingdom of Prussia has concluded an agreement with the Italian Kingdom, by virtue of which, as soon as Cardinal Ledochowski should appear outside the Vatican, he should be arrested and handed over to the Kingdom of Prussia." I take the liberty, with the authority vested in me, to officially declare to Your Eminence that the contrary is the case. "Cardinal Ledochowski has been, on various occasions, judged and punished for violations of the laws of the Kingdom of Prussia; and the highest administrators of the state have expressed their sentiments..."

Ludovicus Card.

Most Eminent Cardinal,

I ask that you also bring this to the attention of the highest administrators of the Empire and the Kingdom, so that they may know and duly consider

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it.

[*Latin ed. p. 602*]

602 APPENDIX: Various penalties were imposed by different tribunals of Posen for violations of Prussian laws, and my government duly transmitted these sentences to the Cardinal through Italian authorities. "However, my government has never had the idea of proposing to the Italian government the arrest and extradition of His Eminence, Cardinal Ledochowski, and the Italian authorities could not have accepted such a proposal, since the Prussian-Italian extradition treaty is not applicable in any way to the category of crimes for which Cardinal Ledochowski was accused. "Therefore, I permit myself to declare again and officially: That my government has never proposed the arrest and extradition of Cardinal Ledochowski, and that therefore His Eminence, Cardinal Ledochowski, can leave the Vatican without fearing in the slightest to be arrested in Rome, and in general in Italy, and handed over to Prussia, or to provoke any conflict, due to the aforementioned events in Prussia, with the Italian authorities. "I offer Your Eminence the renewed assurance of my high esteem and devotion. " Signed, SCHLOZER.

VIII. Efforts were made by the authorities of the Italian Kingdom to send orators and officials to the same Cardinal, in accordance with the order of public law. However, it was never the intention of the same administrators of the Prussian Empire to order or suggest to the orators and officials of the Italian Kingdom that Cardinal Ledochowski should be apprehended and handed over to our Emperor; and indeed, these same orators and officials of the Italian Kingdom could not have accepted such a proposal, since the Prussian-Italian convention concerning the surrender of fugitives does not mention anywhere the crimes for which Cardinal Ledochowski was accused. Therefore, it is fitting for me again, and indeed with all the authority I possess, to declare that the Prussian Empire, to which I serve, has never ordered or suggested that Cardinal Ledochowski should be apprehended and handed over; and therefore, that same eminent man should be allowed, as it pleases him, to reside in the Vatican, without fearing that he might be apprehended either in Rome or anywhere in Italy, and handed over to the Prussian authorities, or that any conflict might arise with the Italian Kingdom in Prussia, due to the events which I have explained here. And I gladly offer to Your Eminence, the repeated expression of my regard and devotion. Signed, SCHLOZER.

[*Latin ed. p. 603*]

603 A SUMMARY OF THE FIFTEEN DOCUMENTS CONTAINED IN THIS VOLUME, and concerning the efforts made by Bishops to promote the Catholic youth, and also recommending the philosophy of Saint Thomas Aquinas to the young men in seminaries.

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603 *LITTERAE* (Letters) ISSUED BY PAPAL AUTHORITY: Letters in which the Holy Father urges the Bishops of Ireland to moderate the spirits of the citizens, so that those who rightly demand, abstaining from all violence and from clandestine societies, may justly obtain what they desire. p. 97 Encyclical Letter of His Holiness Pope Leo XIII concerning Saint Francis of Assisi and the propagation of the Third Order of Franciscans.

145 By Papal decree, His Holiness Pope Leo XIII established a Tribunal in the Vatican buildings to resolve any controversies that might arise concerning contracts with the administration of those same buildings. p. 193 Encyclical Letter of His Holiness Pope Leo XIII to the venerable brothers, Archbishops and Bishops throughout the Spanish region.

241 Letters of His Holiness Pope Leo XIII to the Archbishop of Dublin, in which he implores that the clergy of all Ireland take care to moderate the spirits of the citizens, in those matters in which they are now embroiled; Letters concerning the founding and establishment in Rome of a College for Irish clerics. p. 337 Responses of the prelates of Spain to the Encyclical Letter of Pope Leo XIII.

398 Letters of His Holiness Pope Leo XIII to the President of the Catholic Society of Hungary.

451 Constitution of His Holiness Pope Leo XIII concerning the law of the Third Secular Order of Franciscans.

513 Letters of Leo XIII to Sir F. Pustet concerning the newly undertaken edition of the works of Cosmas Alam, in the year of Our Lord.

561 FROM THE PROCEEDINGS: Consistory held on July 3, 1882, p. 3. Consistory held on September 25, 1882.

153 Concerning the Consistory held on March 15, 1883. p. 399.

[*Latin ed. p. 604*]

604 From the DECREES of the HOLY COUNCIL concerning the Nullity of Nominations and the Restoration of Fruits; in which is extensively discussed the matter of resignations, accepted or rejected by the Ordinary within the month, which, if not accepted, are automatically transferred to the Holy See; according to the norm of the Constitution of His Holiness Gregory XIII, which begins with the words "Eumano vix iudicio," and which must be observed not only among us, but also among the Belgians. . . . » 9 Of Options; The Bishop confers the vacant canonical prebend upon his vicar general; however, another canon desires it, considering that this prebend is subject to the right of option. » 57 It is resolved that the validity of a promise holds, even if the woman, who has suffered defloration in the hope of a future marriage, has probably not made a promise. » 65 Of Marriages; Of the Deprivation of a Parish; it is resolved that a priest should be deprived of his parish if, after repeated admonitions from the Ordinary, he has proven to be incorrigible, and if he has been accused of various

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crimes. » 70 Of Fruits and Distributions; A canon is to forgo all distributions corresponding to the time of his absence, and if there has been no legitimate reason for his absence, known to the Bishop. » 76 Of Restitution or Absolution; The master of ceremonies, for the sake of the visitation, is not to receive anything from the rectors of the churches, except for food, unless he has been specially invited. . . . » 81 Of Elections; It is doubtful whether an election to the office of secretary of the chapter can be considered valid, if the elected one has probably given his vote to himself. » 100 Of Distributions; The canon, the parish priest, and his assistants inquire whether they are to be deprived of distributions for the time during which they explain the Holy Gospel or perform spiritual exercises. » 104 Of Gratian and Minden; A request is made for Apostolic dispensations concerning the payment of stipends. » III Of Renunciations and Excardination; A canon, acting as a penitentiary, makes a vow, and his renunciation is accepted, which the Bishop refused to accept. » 119 Of Chapter Assemblies; The chapter requests that twelve laymen participate in the chapter assemblies, just as twelve canons participate, as the civil law refers to twelve. » 123 Of a Voice in the Chapter; The canons contend for the right to have a voice in the chapter concerning the archpriest, whose benefice is restored to its former status, having been private, when it had been extinguished in the preceding century. » 127 Of Marriage; In the presence of an impediment of affinity, it is doubtful whether an Apostolic dispensation was granted before or after the beginning of the marriage.

[*Latin ed. p. 605*]

132 Concerning a claim made by a woman regarding an act of fornication. The ability to marry is denied, for a just and sufficient reason.

159 Regarding jurisdiction: A dispute exists between the Archbishop of Naples and the Bishop of Nola concerning the ownership of a certain territory and church, each claiming that it belongs to them.

163 Regarding the right to bear the cross and insignia: A dispute arises between a parish priest and the canon of a collegiate church concerning which of them has the right to bear the cross and insignia at funerals in which the collegiate chapter is involved.

171 Regarding the approval of a statute: A sodality requests that a recently drafted statute be approved by the Apostolic See, which the ordinary refuses to grant.

186 Regarding a dispensation from irregularity: A dispensation is granted to a priest who, due to an attack of apoplexy, has lost the use of his arm.

195 Regarding the application of Masses: It is questioned whether a Mass should be offered for a benefactor, when it is not certain whether the person who instituted the Mass intended to impose this obligation.

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196 Regarding parochial jurisdiction: Two parish priests are in dispute, concerning which of them has jurisdiction over a house built in a very large area, located between two parishes.

200 Regarding a canonical master: A canon, who, having accepted the burden for four years, taught theology gratuitously in the seminary, considered that it would be more beneficial to him to receive a regular salary than to continue the free teaching, because the Church's statutes do not impose an obligation of free teaching.

208 Regarding marriage: A marriage is not declared null, because it was not sufficiently proven that there was a lack of a domicile or quasi-domicile for the purposes of parochial jurisdiction.

214 Regarding institution: An ordinary, not accepting the presentation of two sons of a patron, due to their lack of age and studies, granted the benefice to one of them; this grant is declared invalid.

229 Regarding ordination or excardination: A dispensation is requested for a cleric with a non-local domicile who has almost completed three years, during which time he has been a member of the Bishop's household, in order to receive the holy orders.

247 Regarding the right to perform funerals: Religious fathers of a house claim, by virtue of custom, the right to perform the funeral rites and to bury the dead of two parishes, and to carry them to the public cemetery.

292 Regarding the active patronage: Canons of the mass claim the active right of patronage over all offerings and dignities of the mass; and also the passive right of patronage over the Archdeaconry and Primicery within the same cathedral.

302

[*Latin ed. p. 606*]

606 Feltrio. Concerning matters of law and privileges; fourteen doubts are resolved regarding the rights and privileges of parochial churches, concerning whether a certain chapter of the Cathedral has a right to them, since it possesses habitual jurisdiction.

309 Chambéry. Regarding a dispensation from irregularity: a priest is dispensed from an irregularity contracted due to the amputation of his fingers, namely the thumbs and index fingers.

340 Acheruntino, concerning a dispensation for marriage; a dispensation for marriage is granted to Peter, after the payment of 200 livres in favor of the bride.

341 Patronage; it is debated to whom the right of presentation belongs for two canonical benefices, while the collegiate church, to which they pertain, has been suppressed by civil law.

344 Rome, concerning a dispensation; the cleric Marcellus obtained a dispensation to receive the holy orders, even though, due to a weakness of

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his eyesight, he was forced to abstain from reading.

350 Camerano, a petition concerning stipends for the execution of Apostolic dispensations.

353 Segovia. Concerning a doctoral canonry; it is resolved that those who have obtained a license or doctorate solely in canon law are also to be admitted to the competition for this canonry.

356 Competition; it is doubted whether the report of the examiners was so poor that a new competition must be held.

362 Marriage; the question is whether a marriage is invalid due to an impediment arising from an illicit affinity.

409 Osena, concerning distributions; the Ordinary requests that the Sacred Congregation of the Council authoritatively declare whether the beneficiaries can use at least two-thirds of the fruits of the benefice on days when they are absent from the choir, in order to feed the students in the seminary.

424 Naples, concerning a visitation; the patron of a chapel, relying on a certain Bull of Leo X, claims that the chapel and its chaplain are exempt from all visitation and the jurisdiction of the Ordinary.

427 Marriage; a man seeks the validity of a marriage into which he entered unwillingly and under coercion.

434 Dispensation concerning a birth defect.

452 Florence, concerning pensions; a parish priest of a wealthy parish refused to pay the pensions previously imposed by the Florentine Ordinary; it is questioned whether this action was done with prior Apostolic approval, and whether these pensions are permanent.

456 Pamplona. Concerning a theological canonry; a theological canon is granted the right to receive choral distributions for the hours in which he explains the sacred Scriptures in the seminary.

463 Troyes. Concerning canonical rights; the erection of a new chapter is denied to two canons.

[*Latin ed. p. 607*]

SUMMA p; concerning the common mass, the voice pertains to the administration of chapter goods, and precedence concerning the stall, as with other Canons.

4 6 8 Concerning Concursus; it is declared that it consists of a bad relationship of examiners, because a cumulative judgment of science and requirements was deferred by them concerning the concursus.

4 7 6 Concerning the deprivation of a parish; the sentence of the Bishop is confirmed, who, after due legal form, deprived the parish priest of the benefit of the parish.

4 8 0 Concerning betrothals; it is declared that it does not consist of the

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validity of betrothals contracted through a mediator, who was present as the sole witness.

4 8 8 Concerning Ceriniolen; the question is between the parish and the Chapter, concerning whether the stipends for assistant chaplains are to be paid from the taxes, or from the commonly called movable wealth.

5 2 1 Concerning Fulden; concerning the custom and faculty of reserving the Most Holy Eucharist in filial churches.

5 2 8 Concerning the nomination of Castrimaris; it is disputed whether one who is to be appointed to provide a doctorate, or a hebdomadarius, should be chosen.

5 3 2 Concerning the jurisdiction of Murana and Potentina; two Bishops decide that the jurisdiction pertains to the Chaplain of S. Cataldi.

5 6 2 Concerning Taurinen; concerning dismemberment and erection; it is asked whether the extreme necessities of the Most Holy Church are present, in order to proceed with the dismemberment.

5 6 9 2 TORV M 60? Concerning betrothals; a woman desires to withdraw from the given faith, because her husband will labor with a certain disease.

5 7 9 EX S. CONG. E P. ET R E G. Romana, or Venetiarum; concerning the minor Capuchins, Francis, concerning the obligation of reciting the Divine Office; it was asked whether those who have professed the simple vows of this Order are bound to private recitation of the Divine Office.

2 5 0 Concerning Meliten; concerning the interpretation of resolutions concerning funerals; it is disputed whether certain resolutions concerning emoluments and funerals can be applied to Melita in a similar case.

2 5 8 Concerning Terracina; concerning the tithe; the parish priest, after the union of two parishes, refused to render to the Bishop the double tithe, which the two parishes paid before the union.

3 2 7 EX S. CONG. RITUUM Galliarum; it is granted to all Galliarum dioceses, that the feasts of the Most Holy Mary Magdalene, Penitent, and the Virgin Marthe, may be celebrated under a double major rite.

4 0 Concerning Galliarum; the Most Holy Father grants to the prelates of Galliarum, those who supplicate, that they may be able to celebrate the feasts of the Most Holy Apostles Lazarus, Maximinus, and Trophimus under a double minor rite.

4 0* Concerning Marianopolitana; concerning beatification.

[*Latin ed. p. 608*]

€08 SUMMA. Acts of the canonization of the venerable Servant of God, Margaret Bourgeoys, foundress of the Congregation of the Sisters of Our Lady. 48 Argentina. Letters to the Bishop of Argentina, in which it is declared that Ordinaries can approve, insofar as they deem it fitting, litanies for private recitation, but not for public functions. 1 9 1 Ravenna. A ca-

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pitular cross cannot be placed on the Gospel book, nor can it be carried processionally with the same [book] to the sanctuary in the Mass of Supplication, which is intended for Beneficiaries or Chaplains. 4 4 6 Bruges. Concerning the confirmation of the cult, which has been practiced from time immemorial, of the Servant of God, Cardinal Bono, of Flanders, Corniti. 1 9 2 Approval of a scapular in honor of Saint Michael the Archangel for the salvation of the City. . . 286 Decree: whereby the Ordinaries of the places are urged to adopt, in their respective dioceses, the edition of choral books, recently printed in Ratisbon, by the Congregation of Saint Pius X; and it is also prescribed that uniformity in singing be maintained, so that those parts which are indicated by musical notes, in new editions of Missals, Rituals, and Pontificals, conform to the standard of that same edition. 507 Calaritan. Concerning the canonization of the blessed Salvador of Horta, a lay brother of the Order of Friars Minor of Saint Francis. 286 Rome, or Praenestina and Tridentina, concerning the beatification and canonization of the venerable Servant of God, Father Stephen Bellesini, a priest of the Order of Eremites of Saint Augustine, parish priest in the town of Geneslani. 287 Quebec. Concerning the beatification and canonization of the venerable Servant of God, Sister Mary of the Incarnation, foundress of the Ursuline Monastery in the city of Quebec. 2 8 8 Response concerning primary feasts, etc., if they coincide with secondary feasts of the Passion of the Lord. 374 Novara. The use of gas lamps above the altars is denied, even in order to obtain greater splendor. 446 Decree: whereby the feasts of Saint Benedict the Abbot, Saint Dominic Gusman, and Saint Francis of Assisi, are observed according to the rite of the greater double. 5 0 6 Rotterdam. Concerning the beatification and canonization of the venerable Servant of God, John Baptist de la Salle. 5 1 1 France. Decree whereby Saint Vincent de Paul is established as the patron of all charitable societies which exist in France and which originated from him. 5 8 7 Valencia: Concerning the beatification and canonization of Joseph Mary of Saint Agnes, commonly known as Agnes of Beniganim. 588 Reggio. Concerning the beatification and canonization of the venerable Servant of God, Father Lesuald of Reggio, a priest of the Order of Friars Minor of Saint Francis, the Capuchins. 5 8 9

[*Latin ed. p. 609*]

SUMMARY. FROM THE HOLY CONGREGATION OF INDULGENCES. The Archbishop of Mulin requests and obtains a hundred days' indulgence for those who recite the prayer in honor of Saint Joseph. The Holy Father grants a three hundred days' indulgence to all who recite the invocation in honor of Saint Joseph: "Make us know, etc."

"The General Vicarius of the Diocese of Aquensis obtained from the Most Blessed Father a two hundred days' indulgence for priests who recite two prayers before and after sacramental confession.

A three hundred days' indulgence is granted to boys who are devoted

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to letters, if they recite the annexed prayer.

A hundred days' indulgence is granted to priests who recite the annexed prayer.

Decree of Vapincen, in which it is declared that there are no indulgences pertaining to the aforementioned Father Blanchard.

A three hundred days' indulgence is granted to those who recite the annexed prayer.

FROM THE HOLY CONGREGATION FOR THE SACRED RELIGIOUS TRADITION. Decree concerning a certain booklet. It is stated that those who are not bound by a single meal are nevertheless subject to the law concerning permitted and prohibited foods.

Doubts regarding the interpretation of the Apostolic Constitution.

FROM THE APOSTOLIC PENITENTIARY. Response concerning the average time for observing natural fasting and reciting the Divine Office.

FROM THE HOLY CONGREGATION FOR THE PROPAGATION OF THE FAITH. Circular letters from the Eminent Prefect to the Apostolic Vicars, etc., by which they are charged to investigate in their respective jurisdictions those things which may contribute to both sacred and profane knowledge.

Circular letters to the Bishops of Ireland, in which it is stated that money collected for alms cannot be added to by anyone who appears to do so by force or fear.

FROM THE HOLY CONGREGATION OF THE INDEX. Decree in which several books are prohibited.

Decree in which several books are prohibited.

FROM THE HOLY CONGREGATION FOR EXTRAORDINARY ECCLESIASTICAL AFFAIRS. Decree resolving certain questions that arose in Bosnia concerning the collation of parishes.

[*Latin ed. p. 610*]

610 SUMMARY FROM THE SECRETARY'S COLLECTION OF BRIEF DOCUMENTS, Part I, Appendix IV; wherein are recorded the Offices and Masses of the Saints whose feasts have been extended to the universal Church by the Most Holy Pope Leo XIII, dated June 2, 1884. This document establishes a single formula for absolution, both general and for the article of death, and for the papal blessing, to be used by the Franciscan Tertiaries, and other families of that order, as well as by other regular orders and Tertiaries belonging to them. 49 Brief; wherein are inserted the Offices of certain Saints in both the universal Calendar and the Calendar of the Roman Clergy; and it is prescribed how the general rubric in the Roman Breviary, title X, concerning the translation of feasts, should be changed, so that in both Calendars the proper places for the introduction of new Offices are indicated. 54 A Sodalitas, called from adoration, is granted Indulgences.

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449 Brief; concerning the repair of the APPENDICES, Appendix I; wherein are recorded the Offices and Masses of the blessed Benedict Joseph of the Labourers and John Baptist of Ross, confessors. 41 Appendix II; the Offices and Masses of Saint Lawrence of Brundisium, confessor, and of Saint Clara of the Cross of Montefalco, virgin. 86 Appendix III; wherein are recorded the Masses of the blessed Alphonsus of Orozco, Charles of Setia, and Humilis of Bisignano, confessors. 141 Appendix V; wherein is found a brief summary concerning the instruction published by the Sacred Congregation of Bishops and Regulars on June 1, 1880. 375 Appendix VI; concerning the commemoration of the Nativity of Saint Raphael, on the secular feast day. 447 Appendix VII; wherein are recorded the Masses and Offices extended by the Most Holy Pope Leo XIII to the Roman clergy. 495 Appendix VIII; wherein are collected, for the sake of history, certain letters concerning Church affairs, from Pope Leo XIII to the German Emperor, and the Emperor's replies. 589> NOTICES: A notice indicating on which days new Offices can be assigned in the particular Calendars, to be inserted in the universal Calendar. 142 Notice; concerning a friendly agreement between the Order of Carmelites and the heirs of Augustine Piccone. 335 Pontifical documents concerning the commentary, reported on page 375 of this volume. 540 A Votum concerning the funds for the funerals of Eminences, Cardinals, to be given to the parish and titular church. 55

[*Latin ed. p. 611*]

611 GENERAL INDEX OF CONCLUSIONS WHICH ARE AMPLY AND ALMOST ENTIRELY CONTAINED IN THE NOTES, AND WHICH ARE FOUND IN THE ACTS IN THIS VOLUME, CONCERNING THE MATTERS EXPOSED OR EXPLAINED IN EACH INDIVIDUAL ACT. These conclusions are comprehended under the following words:

Canonicus theologus (Canonically Theologian)

Concursus (Concurrence)

Confraternitas (Confraternity)

Congregationes Romanae (Roman Congregations)

Dispensationes Apostolicae (Apostolic Dispensations)

Distributiones (Distributions)

Episcopus quoad s. Visitationem (Bishop concerning Sacred Visitation)

Irregularitas (Irregularity)

Iurisdictio (Jurisdiction)

Ius deferendi crucem (Right to bear the cross)

Ius funerandi (Right to perform funeral rites)

Iuspatronatus (Patronage)

Matrimonium (Marriage)

Missa quoad applicationem (Mass concerning application)

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Optio (Option)

Parochus quoad paroeciam (Parish Priest concerning the parish)

Paroecia quoad unionem (Parish concerning union)

Canonicus theologus: Apprime respondet menti s. Trident. Synodi, quod lectiones s. Scripturae ad Cleri populique instructionem, habeantur in Cathedrali vel Collegiata, pag. 467. (The Canonically Theologian: It fully corresponds to the mind of the Council of Trent, that the readings from Holy Scripture, for the instruction of the clergy and the people, should be held in the Cathedral or Collegiate church, page 467.)

It is gathered from several resolutions of the Holy General Council, especially those published after the Encyclical *Inter praecipuas machinationes* of Gregory XVI, that the subject matter of these readings should be the explanation of Holy Scripture, page 467.

This constant observance is not contradicted by the resolution on the subject: for the subject matter of the readings is preserved, and only in the case of which we are speaking is it permitted that the readings be held in the Seminary, with due attention.

Pensio (Pension)

Permutatio et resignatio Professi votorum simplicium quoad officium divinum (Exchange and resignation of the simple vows of the professed concerning divine office)

Retributio (Retribution)

Sponsalia (Betrothal)

Statutum (Statute)

Vox in Capitulo (Vote in Chapter)

san peculiaribus tiis, ibid. (with special conditions, ibid.)

locus circumstan- (circumstances of the place)

Concursus: Solius Episcopi iudicio commissum est renuntiare digniorem inter approbatos ; ita ut eidem liceat, aliqua ex parte, examinatorum reformare iudicium, declarando esse digniorem, etiam illum qui ab eisdem uti tantum dignus vel idoneus declaratus fuerit, pag. 370. (In the matter of concurrence: It is entrusted to the judgment of the Bishop alone to declare the more worthy among the approved; so that he may, to some extent, reform the judgment of the examiners, declaring someone to be more worthy, even if they themselves have declared him to be only worthy or suitable, page 370.)

Therefore, from this jurisprudence, it must be said that, through concurrence, the act of collation is not perfected, but is merely prepared and arranged, page 371.

Therefore, no one among those concurring acquires any right to obtain

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a benefit.

[*Latin ed. p. 612*]

612 GENERAL INDEX: The judgment of the examiners should be more favorable; otherwise, the election and renunciation of a more worthy candidate would not be left to the sole judgment of the Bishop, ibid. Although in a particular case only one concurring opinion may be required to exclude a candidate, greater reasons are required to exclude him, yet the concurring opinion does not acquire a certain right, so that the Bishop may be compelled to proceed with the institution: because the entire substance of the act of collation of parishes is left to the judgment of the Bishop and the episcopal jurisdiction, ibid. According to the Council of Trent, Session 24, chapter 18, those who, after a cumulative judgment, have been judged suitable in age, morals, doctrine, prudence, and other qualities to govern the vacant parish, must be renounced by the examiners, ibid. Hence, the Sacred Congregation, which has considered the science and qualities necessary for the proper administration of things, considered the report of the examiners to be unfavorable, and ordered a new examination to be held before other examiners, ibid. A confraternity or sodality, canonically erected or with the approval of the Bishop, can make statutes, or establish laws concerning its particular administration, and this is according to law, page 191. However, such statutes, in order to have binding force, must be examined and approved for the specific locality, according to the Bull of Clement VIII, by the Ordinary, to whose moderation and correction they remain subject in all things and always, ibid. Nevertheless, these laws should not be considered unworthy of approval, but must be consonant with the Apostolic Constitutions, and with the resolutions of the Holy Congregations, ibid. The Sacred Congregations of Rome, acting in the name of the Holy Father, clarify and determine what is the law for every similar case, when they judge a particular petition or fact, page 263. Therefore, according to the more recent opinion, the resolutions of the Holy Congregations, although given for particular cases, have the force of general law, and bind for similar cases, ibid. This opinion is confirmed by a resolution given in a particular case; for it is decreed that the resolution given in Caven and Sarnen should be applied to the case of the Parochial Vicars of Melitensia, in the first place, ibid. Therefore, a public cemetery is considered, by fiction of law, as part of the parochial district with regard to those who do not have their own burial place; but not with regard to those who have a burial place in exempt churches: for even for these, the public cemetery is, by fiction of law, part of the district of the exempt church; and only the religious have the right to bury bodies from their churches.

[*Latin ed. p. 613*]

INDEX. GENERALIA. Ex notissima quoque taxa, in Lucca, ad coeme-

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terium publicum, absque parrocho, centies praecipitur. Episcopus, e - ibid. Dispensationes Apostolicae, ius vicarium generalem, et quemlibet officialem, qui non reciperet ex eiusdem officialibus, etiam oblatum sub specie panis, incurret excommunicationem latae sententiae, (quae in suo ro- pereposse, etiam post Con- muneris, in stitutionem tionum Apostolicarum in causis m a- Apostolicae of- Sedis) officialis qui praesumat aliquid mu- executione trimonialibus, dispensa- ibid. tionibus, pag. 8. In dispensationibus Ceu alias innuiimus ex iure, contemnentes, suas facere non posse, contemnentes, suas facere non posse, contemnentes, suas facere non posse

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[*Latin ed. p. 614*]

614 INDEX GENERALIS: In tempore quo in curata Ecclesia reminens denarios fraudare non debent: "ideo sedeat, et si possit, ministraret, praesens sit, Ecclesiis et cathedralibus, si facultas habeatur, aut in collegio, ibidem. Duas distributionum paries Magistri qui beneficia possident, quae in tertiis distributionibus stant, pag. 427. Sacra Congregatio, pluries declaravit, canonico habenti curam non animarum, etiamsi intersit, deberi divinas distributiones, si tempore quo divina officia celebrantur, audit confessiones Episcopus quoad visitationem cotidianas vel alia ad ipsam curam spectantia exerceat, ibidem. Privilegium exemptionis haud includit exemptionem a visitatione Ordinarii; ceu colligitur ex variis resolutionibus Sacrae Congregationis. Quare haud mirum videtur si ex una parte exemptionis privilegia haud denegata fuerunt, ex altera tamen status animarum perficitur, aut Evangelium explanatur; Episcopo si veluti praesens in choro habeatur parochus, cum nam ex praecepto divino ille oves suas agnoscere debeat, pro his ficiam offerre, sacris verbisque divinis praedicatione et bonorum omnium operum exemplo pascere, pag. 110. Eadem dici posse decoadiutoribus Parochi ipsi enim nullum est dubium: parochi absentis, aut Hinc Ecclesiae haud ius simplex aut eximit fuit in visitandi, pag. 432. loco exemptio alicui pio eamdem concessa, a visitatione Episcopi, nisi de ea specialis et expressa mentio fiat; et in dubio a n vera adsit exemptio, standum est pro iurisdictione Episcopi, ibidem. Quum ius visitandi, ad Episcopos pertinens, ideo est que fuerit per Tridentinum, contra ubi eadem ratio ibi ea-dem, legis dispositio esse debet." ibidem. Cum autem determinari possit, quoties gerentes curam lucrari valeant, non distributio sancitum firmatum - quod plures docent non dari praescriptio, ideo contraria observantia, ad illud infringendum, haud proferet, etiam quia ex nonexercitio nes, licet absentes achoro, seu qui actus facultativa ius positivum amitti legitima ideo nequeat, pag. Sacra Congregatio adiicere solet - onerata Antistites corum excusantur causa conscientia - ut dem hoc privilegio innuat, eos ita iure fulciuntur quoad s. visitationem Ecclesiarum posse pro locorum quepiorum, ut si aliquam diebus et horis, in quibus animarum bonum uti pastores aliunde dicte vocat. ibidem. Quum laborantes in vinea queant, id facere valeant iure delegato, seu tamquam Delegati Apostolici, Tridentinum, Sess. 7, cap. 8 de

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ref. ibidem.

[*Latin ed. p. 615*]

INDEX GENERALIS: The Church desires the ministry of clerics to be useful and honorable; therefore, it excludes certain persons, whose ministry would be deficient in one way or another, or in both ways, and declares them to be irregular, page 45. For it is clear that those who are ordained possess a certain dignity above others; therefore, even those born illegitimately are repelled from the reception of orders, because their vicious origin clearly affects their reputation in the estimation of men, ibid. Illegitimate persons, by Apostolic dispensation, are ordered, for the most part, to exercise the sacred ministry in places where there is a lack, as in "Pernes," concerning incontinence, "to God," in memory of the Council of Trent, Session 25, longissima, chapter 15, in archiepiscopal sees, ibid. Ecclesiastical jurisdiction can be claimed by a double title: namely, by an expressed title, which proceeds from a tacit privilege of the Apostolic See; or by a presumed title, which arises from the possession of a hundred years, or from an immemorial origin. 177. In the choice of an expressed title, which the possessor, attached to the presumed title, may allege, as the jurists say, a better title in the world, for the purpose of retaining the matter or jurisdiction to himself; than that which he and his predecessors have held for so long without complaint, page 178, 615. The presumed title of possession, whether from a hundred years or from an immemorial origin, cannot be revoked, unless by another hundred years, with all numbers absolute, ibid. From a custom of immemorial or peaceful possession, whatever it may be, it is not possible to acquire the power to impart sacramental absolution, as is stated in chapter 5 of the 2nd Sext, concerning Penance, page 569. For the nature and reason of judgment are such that sentence is passed only upon those who are subject to it, ibid. This has always been held true in the Church, and as the Tridentine Council, Session 23, chapter 17, concerning reforms, confirms, it is of no importance that absolution be granted by a priest to one over whom he has no jurisdiction, either directly or by delegation, ibid. The right to carry the cross: It is certain in law, and in the resolutions of the Most Holy Congregations, unless otherwise determined by long-standing custom, page 185, that only one cross should be carried at funerals, and that it should belong to the Church itself to which the body is transferred. Therefore, there can be no doubt that the parish priest is legally entitled to remove the cross at the funerals of his parishioners, who are brought to the parochial church, ibid. According to the resolutions of the Most Holy Congregations, this rule is excepted for...

[*Latin ed. p. 616*]

616 INDEX GENERALIS: Kosso, where a funeral procession accompanies the Chapter of the Cathedral or Collegiate Church; then, because of the

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same reverence, the Chapter's cross is raised, under which all should proceed, ibid. In conducting funerals, in which the Chapter of the Cathedral or Collegiate Church participates, precedence must be given to the Chapter itself, as being of higher rank in the ecclesiastical hierarchy, page 186. The right to bury, the right to inter private citizens, and the right to perform the funeral service over the bodies, being closely connected, are enumerated among the parochial rights, and pertain to the Parish Priests, page 302. Parish Priests have the right to be present at the burial of their parishioners, whether they lack burial or have not arranged for it, ibid. If someone alleges a custom contrary to the rights of Parish Priests, the burden lies on them to prove it conclusively, and that it is based on a law superior to the one in question: but such a claim itself resists the common law, ibid. However, the rights of Parish Priests can sometimes be superseded, when someone possesses a burial place in a foreign church, or because that church has acquired the right to bury, or to inter, by privilege, by convention, or by some other just title, ibid. The right of patronage: The right of patronage, whether passive or active, cannot pass to another person, being second in order, unless someone first in order appears who can clearly demonstrate his own succession and his own calling, page 236. Those who are named by the founder himself, and who enjoy the passive right, can, by the same nomination, obstruct the right of any person, page 237. It is permissible for the founder of a benefice, at the very beginning of the foundation, to impose any honorable conditions, even those contrary to common law, provided that they do not harm the essence of the benefice, ibid. The ecclesiastical right of patronage provides the most valid title for the foundation and endowment of benefices, page 308. According to the common opinion of Doctors, it is not required that founders establish new benefices with their own property: but it is sufficient that they establish benefices from the goods of the chapter, the fruits of which would otherwise belong to the founders, ibid. Those rights must be observed which founders have expressly reserved for themselves in such establishments and endowments, especially when the express consent of the Ordinary and the confirmation of the Pope have been added, page 309. A great argument in favor of the existing right of patronage is derived from observation. And observations provide the greatest demonstration.

[*Latin ed. p. 617*]

INDEX G NER: Statutes established by the chapters possess all the greater authority, inasmuch as they were established in times long past. Ibid. Nominations made by the Pope, even over the centuries, do not prejudice the rights of the patrons, Ibid. There is no recourse against the exercise of such rights, because they establish servitude against the Bishops; since the patronage of canons in cathedrals seems rather to affect the manner than the substance. Indeed, in the case of simultaneous

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patronage, the election of canons is reserved to the Chapter, while the confirmation of the elected is reserved to the Bishop, Ibid. Since the foundation, construction, or endowment of a church are required by law and by the canons to acquire patronage, it follows that the Chapter cannot exercise any right in providing these things, in which it has contributed nothing to the constitution, page 350. However, the rights of patrons, the first of which is the power to present a cleric to a vacant benefice, subsist as long as the matter subject to the right of patronage remains in its own state, Ibid. It cannot be doubted that canonical prebends in the diocese have been lost, both by the compilation of the Fiscal Records and by the negligence of the patrons; who did nothing to preserve them; hence, it is to be said that they have perished, if not by right, at least in fact; but in a matter that has ceased to be, no one can exercise a right. Ibid. ALIS 617: Marriage is so defined that anyone can have not only one, but also several homes, and enjoy the rights and privileges of each. Page 228. According to the decrees, it seems that, without the intention of abandoning the paternal home, and without the will to remain permanently elsewhere, the jurisdiction of the parish of the first domicile does not cease, Ibid. From Benedict XIV, *De Synodo Dioec.*, book 13, chapter 23, paragraph 5, it cannot be doubted of the validity of a marriage contracted before a priest, even if he is called by another name, but who has been used by the contracting parties as a priest, Ibid. Indeed, from chapter "De eo qui cognovit," it is necessary that an impediment be proven publicly and notoriously, or by suitable witnesses, in order that the validity of the marriage may be impugned, page 423. Neither is it always sufficient to prove the impediment to nullify the marriage by the rumor of the neighborhood, or by the confession of the spouses, revealing their own wickedness; and he who accuses himself seems to be acting from error or deceit. Ibid. Although it is not required that the witnesses be such that they refer to a fact that they have seen with their own eyes, which is often impossible; nevertheless, they must be such by law, who refer to the indications or circumstances in such a way that the act is proven by induction, Ibid.

[*Latin ed. p. 618*]

INDEX •618 Also from question 29, GENERALIS, to the blessed Thomas, in 4 distinct, unity, article 3, question 1, concerning marriage, a grave fear unjustly instilled, causes neither nullity nor impediment in either party. page 444. However, it must be understood that, considering all things, doubt remains as to whether the fear unjustly instilled in contracting the marriage is to be considered grave, or whether, even if it is grave, it cannot be conclusively proven. Ibid. For, besides the fact that, when a contract is celebrated, possession, or presumption, holds for its value, it also appears that both reverence due to the sacrament, and the public good, and the upbringing of children, are involved, so that marriages should not be

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dissolved. Ibid. It appears either that no force was present, and the fear was not sufficient to induce the marriage; or, if it was present, it was not properly proven. page 445. Unless there are very serious presumptions to the contrary; which, namely, the founder of the institution, having freely permitted the celebration, left the application to be determined. Ibid. The right of option is not subject to common law, but is included in a statute, custom, or Apostolic privilege. page 64. The right of this kind is acquired by custom, as is stated in chapter IV concerning custom, where Boniface VIII says: "Since in your Rule, it is a general rule, confirmed by numerous resolutions of the Holy See, that he who founded the benefice and ordered the celebration of Mass, also intended that the same should be applied there..." page 200. For from the rule of law, "That which is more likely to happen is usually so." 114 ff. concerning the rule, it is inspected or "it is usually so, that..." Ibid. This kind of likelihood is such that it cannot be reduced to nothing, but may gradually improve, so that others, in their own good, may be better, when the custom of choosing is desired, the older canons may offer themselves... " or by Ibid. However, this right must be exercised within twenty days, according to common law, as stated by Boniface VIII in the same chapter. "Lest under the pretext of provisions... the Mass, as far as application is concerned, be prolonged beyond the time we have established, we decree that those who wish to choose, must wait... by the executors... twenty days..." Ibid. The right of option is consistent with justice and equity: for it teaches that those who have previously rendered labor and daily service, should also, in turn, receive a convenient reward. page 65. The custom of choosing is not abolished by the will of several authors: for when the option is granted facultatively, if they wish, this condition also contemplates the possibility of not choosing; as in the case of free...

[*Latin ed. p. 619*]

INDEX GENERALIS: Actions, which consist in doing or not doing; therefore, the rights of faculty are called unprescriptible. Ibid. The parish priest, with regard to the parish, is determined according to the Council of Trent, Session 24, chapter 13, concerning the division of the people into certain and proper parishes; and to each, a church must be assigned as their first, proper, and perpetual parish, so that they may know their shepherd, and from whom alone the flock should receive the sacraments. Page 325. In this matter, there can be no doubt that there are two parishes, already distinct by the Ordinary, even if a decree of the Apostolic Visitor has been issued; which is overcome by the institution of two vicars, who afterwards, in all time, were freely elected by the Bishop, by concurrence and by canonical investiture, independently of the Cathedral Chapter. Ibid. Although a habitual care remains with the Cathedral Chapter, nevertheless, he must actually offer the care of souls by celebrating the sacrifice for the people, accord-

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ing to the Council of Trent, Session 23, chapter 1, concerning this matter; nor does this obligation satisfy the conventional celebration of Mass; since two obligations are distinct from each other. Ibid. Customs contrary to such obligations are always considered abuses and corruptions that must be completely rejected. Page 326. It is also not permissible to doubt that pastors of souls must nourish the flock entrusted to them with the food of the Word of God, on feast days, as it is the censure of the Council of Trent, Session 5, chapter 2, concerning this matter; and the Most Reverend Pontiffs have repeatedly, through Constitutions, insisted on the observance of this disposition, notwithstanding any contrary custom, even an ancient one. Ibid. Likewise, the obligation of teaching the fundamentals of the faith to the young, on Sundays and other feast days, is committed to the parish priests, according to the Council of Trent, Session 24, chapter 7; but it is by no means forbidden, but rather commendable, that others also contribute to this work, under the direction of the parish priests. Ibid. Bishops, generally speaking, cannot compel priests who are not devoted to the care of souls to teach Christian doctrine; however, they can, according to the Constitution, deny advancement to higher orders, and deny benefices to priests, if they have neglected to contribute to the transmission of Christian doctrine. Ibid. The right to administer the sacraments of Matrimony and the Eucharist belongs, primarily, to the parish priests who actually exercise the care; therefore, no one can claim this right for themselves, even if they are a canon of that chapter to which habitual care belongs. Ibid. Bishops, according to the Council of Trent, Session 21...

[*Latin ed. p. 620*]

620 GENERAL INDEX, chapter 6 on Requisitions: Parishes can deprive pastors who live shamefully and scandalously of their benefices; so that, persevering in their wickedness after having been warned, coerced, and punished, they may remain incorrigible, page 488. However, since the penalty of deprivation is the most severe and is equivalent to civil death, it cannot be imposed unless it is done according to the prescribed canonical form, from which arises a conclusive proof of the crime, and it is established that the pastor, after being warned, "has refused to turn away from the path of perdition," ibid. The duties pertaining to the care of souls and the administration of the sacraments must be fulfilled by the pastor actually in charge, if he has the proper will according to law, page 527. Among the duties that pertain to the administration of the sacraments and the care of souls, the expenses of coadjutors should be considered, page 528. The parish, with regard to union: The validity and justice of the union of parishes depend on the reasons that favor the union itself, and on the authority of the Superior who decrees it, page 207. In this matter, it seems that it is best to leave the matter of union to the prudent judgment of the Bishops, since the justice of the union must be determined

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by the circumstances of each individual case, ibid. From the Tridentine Council, Session 7, chapter 6 on Requisitions, it pertains to the Bishops, even as legates of the Apostolic See, to carry out the union of parishes in cases permitted by law, ibid. According to canonical jurisprudence, the union of benefices is usually carried out without prejudice to the rights of the incumbents of the united benefice; so that, whenever possible, the individual rights of each are preserved, page 331. Pensions: The Doctors unanimously teach that Ordinary local authorities cannot, without the approval of the Apostolic See, impose pensions on parochial benefices, page 462. However, the ancient prescription, legally established, regarding pensions, may hold a place for Apostolic approval, especially if there is a just title, ibid. Exchange and resignation: Exchanges of benefices are permitted by Canon Law and are carried out according to the norms of the Constitution of Gregory XIII, namely, the one that begins "Humano vix iudicio," page 37. The Gregorian Constitution is to be considered as universally accepted, ibid. Through concordats, the Apostolic Reservations contained in the same Constitution have not caused any prejudice, unless a special mention has been made in those concordats regarding resignations and exchanges, ibid. According to the general principles of law, for the validity of exchanges...

[*Latin ed. p. 621*]

INDEX G: Iusta causa requiritur, quae est necessitas vel utilitas Ecclesiae. Utilitas quoque permutationibus pro iusta causa habere potest, dummodo et in ea utilitas Ecclesiae reperiatur, ibid. Ad permutationis negotium, mens datur Episcopis aliisque collatoribus, intra quem permutationem vel accepto habere vel rejicere coguntur. Utili mense transacto, illico dispositio permutatorum beneficiorum ad S. Sedem devolvitur, quae eadem aliis idoneis concedendi sibi ius reservavit. ibid. Usque dum S. Sedes de beneficiis resignatis, permutationis causa, non disposuerit, eadem vacantia manent: et nemini licet de iisdem beneficiis disponere, pag. 38. Partium renuncialiones, precibus iam S. Sedi oblatis, iura eiusdem S. Sedis quaesita haud laedunt, et pro non existentibus habenda sunt; fortius cum ex metu, vi extortae sunt. ibid. De beneficiis, quorum dispositio S. Sedi devoluta est, novae resignationes nullae intrinsecus sunt, nominationes et collationes attentatum continent, quod intrinseca nullitate eas afficit, ibid. Resignationes etiam in favorem editae coram Ordinariis nullae sunt habendae, ibid. Idem dicendum est de resignationibus, quibus simoniacum pactum accessit, ibid. Idem de resignationibus quarum intra tres menses publicatio defuit: IERALIS 621 deficiente enim publicatione, beneficia ipso iure in Curia vacantia fiunt, et sunt reservata Papae. ibid. Beneficii cuius collatio nulladefertur, fructus lite pendente percepti restituendis sunt. ibid. Restitutio locum habebet die quo beneficiatus litis pendentiae notitiam habuit, nam ea die bona fides cessasse tenendum est. ibid. Fortius

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ad restitutionem tenetur beneficiatus, si neque choralibus officiis adfuit, nam ei haud opitulatur praestiti servitii ratio. ibid. Communis regula, fructus ab antecessore haud perceptos successori in beneficio adscribit, vel Capitulo ex iure accrescendo, ibid. Verum hisce in casibus plurimi facienda est loci observantia ad cuius normamin fructuum perceptionibus proceditur, ibid. Iuxta Constitutiones S. Pii V., quanta Ecclesiae Dei Episcopi possunt recipere et admittere resignationes eorum, dum taxat, qui aut senio confecti aut corpore impediti vel vitiati, aut crimine noxii, aut censuris ecclesiasticis irretiti sunt. pag. 122. Hinc ex praecepto Ecclesiae, seu ex iure humano positivo, nemo resignationes fieri possunt absque legitima causa. ibid. Inter alias habetur ut legitima causa corporis debilitas seu infirmitas; quo in casu cedere debet lex humana legi naturali, a qua praecipitur valetudinis ac vitae ipsius conservatio, ibid.

[*Latin ed. p. 622*]

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Concerning the Vows of Simplicity of Religious: Regarding the Divine Office

Religious taking simple vows, of whatever order, not even the Minor Orders, are not bound to recite the Divine Office privately. page 257. For the Minor Orders are bound to the recitation of the Divine Office, just as are the Dominicans, Benedictines, and Augustinians; therefore, if others are excused from the obligation of the Divine Office, the Capuchins also received a dispensation from the Supreme Pontiff in the year 1858. ibid.

Concerning Visitation: The principal purpose of visitation by superiors is to promote orthodox doctrine, to maintain good morals, to correct what is wrong, and to incite the faithful to religion, peace, and innocence. page 85. However, all of these things are accomplished through paternal charity... through modest travel, and through service, so that visitors do not impose any burdensome expenses on anyone. ibid.

Therefore, it is strictly commanded that prelates themselves, or anyone else, should not accept any gift whatsoever during a visitation... neither a present, nor any service, even if offered in some way. ibid.

Nothing is to be accepted, except for provisions, for the sake of the visitation, and this has been so strictly commanded, so that the contrary custom, even if long-standing, may not prevail; rather, everything should be done freely for those who are visiting, where the custom prevails of not accepting provisions, money, or anything else, but of doing everything freely. ibid.

Concerning Marriage: The existence of a marriage is not proven by any mere rumor; but the most conclusive evidence requires arguments that clearly demonstrate the will of the man and the woman; for the marriage contract restricts the free will of those entering into the marriage. page 494.

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Therefore, in external matters, it is always to be presumed in favor of the nullity of the marriage, or in favor of the freedom of the contracting parties, whenever the words or signs are doubtful, or do not provide complete proof. ibid.

Proofs are not considered complete through the testimonies of a single witness; because the word of one is the word of no one; and because neither the Gospel, nor any divine or human law, condemns or justifies anyone based on the testimony of a single witness, even if that witness is suitable. ibid.

Concerning Statutes: With respect to common law, the right to enact statutes concerning the state of the Church, divine worship, the ordination of the choir, and the service of the Cathedral, belongs to the Bishop and the Chapter. Rota, p. 4, vol. 1, decision 494, no. 6, recent, page 214.

[*Latin ed. p. 623*]

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GERAUS 623. Where a prebend is vacant, or like a prebend, it must be religiously guarded by those belonging to the Chapter, because it contributes to the order of the Chapter, ibid. The common practice and decrees of the Sacred Congregation of the Council show that canons of a newly established church must observe the conditions and reservations that have been added at the time of its foundation, ibid. It has been repeatedly decided by the Sacred Council that canons, whether within or outside the Chapter, cannot interfere in the particular affairs of the older canons of the original constitution, as is stated on page 132. The Sacred Congregation has approved and confirmed that these reservations, even with regard to the right to participate in distributions and other emoluments of the Chapter, have already been acquired by the older canons, ibid. Bishops, with the consent of the Chapter, can establish new prebends; to which the founder or the Chapter may add certain conditions and reservations, both regarding distributions and regarding rights and precedence in the choir, page 475. The same Sacred Congregation also approves of conditions added regarding precedence: for it is not disapproved in law that canons of a newly established church occupy the last seats in the choir, and that they lack the right of precedence over the older canons, ibid.

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